THE BUCKLER OF State and Justice AGAINST The DESIGN manifestly Discovered of the *Universal Monarchy*, UNDER The vain Pretext of the Queen of *France*, Her PRETENSIONS.

The 2d Edition. To which is added,

A FREE CONFERENCE Touching the Present STATE of ENGLAND Both at home and abroad: In order to the DESIGNS of FRANCE.

LONDON, Printed for *Richard Royston*, and to be sold by *Richard Chiswell* at the *Rose* and *Crown* in St. *Paul*'s Church-Yard. 1673.

THE

Preface.

WHILS'T we reſted quietly under the ſhade of Peace, and the faith of the Promiſes very lately renewed by France not to break it, the noiſe of a mighty Preparation for War in our Neighbourhood unexpectedly ſtruck our ears; a Conſpiracy was detected, through the indefatigable pains of our * Governour, upon one of our * principal Places; which haſtily awakened us out of this Repoſe: and ſcarce were our eyes opened, but divers Libells (the uſual fore-runners of War) were ſpred up and down promiſcuouſly amongſt the Nobility and Common people, to ſe-

* The Marqueſs of *Caſtel-Rodrigo.*
* The City of *Luxemburg.*

duce his Majeſtie's faithful Subjects, under colour of ſome Pretenſions of the moſt Chriſtian Queen upon all theſe Provinces. One whereof is entituled, A Dialogue on the Subject of the Rights of the moſt Chriſtian Queen. *The next hath for Title,* A Treatiſe of the Rights which the moſt Chriſtian Queen hath to ſundry Eſtates of the Monarchy of Spain. *And the third goes by the Appellation of* Threeſcore and fourteen Reaſons, which prove as clear as the day, that the Renunciation made by the Queen of *France* is null, *&c. Theſe Pretenſions tend onely to ſap and undermine the foundation of the* Pyrenean *Treaty, by overthroaing the moſt Chriſtian Queen's Renunciation (which ſhe ſo ſolemnly ſwore to obſerve in favour both of the Peace and Marriage) of all Rights that might belong to her, and ſtretch themſelves to no leſs then the Dutchy of* Brabant,

Brabant *with its Appurtenances, the Seigniory of* Machelen, Antwerp, *the upper* Gelderland, Namur, Limburg, *and the united places beyond the River of* Maes, Hainault, Artois, Cambray, *the Free County of* Burgundy, *the Dutchy of* Luxemburg, *and one of the principal parts of the County of* Flanders.

After I had curiouſly read over the Contents of theſe Libells, at firſt I could not be perſwaded that ſuch Writings were authorized by the Court of France, *and looked upon them a great while as* paſſevolants, *and the effects of ſome idle Pens, which out of wantonneſſe affected to make themſelves remarkable by wittily maintaining a Paradox: and indeed their proceeding was too irregular, the matter too brittle, and the form too unhandſome, to believe with any ground of likelihood that they leaned upon publick Authority. For I ſuppoſed, and with*

Juſtice enough on my ſide, that what Pretenſions ſoever the moſt Chriſtian King could have upon a Prince united unto him by ſo many tyes of Kindred and Amity, he would never have begun by the way of Execution, and the exciting of his People to Rebellion; but that the voice of the Cannon ſhould have been the laſt made uſe of to plead his Cauſe, having before made triall of all other means. This opinion was confirmed to me by the continual Aſſurances and poſitive words which his moſt Chriſtian Majeſtie hath often ſent to the Court of Spain *by his* * *Embaſſador there, and by the* * *Marqueſs* de la Fuente, *That nothing ſhould be able to hinder him from obſerving religiouſly the Peace. In which belief he ſtill fortified us by Propoſitions of Leagues, and of Mediation, and by reiterated Promiſes of an inviolable Friendſhip,*

* The Arch-biſhop of *Ambrun.*

* *Spaniſh* Embaſſador in *France.*

ſhip, not ſparing any care to diſſipate all the Suſpicions which his powerful Arming might juſtly have made us conceive.

Our own Conſciences alſo did oblige us not to doubt of the ſincerity of the Promiſes of France, *and the ſcrupulous care which we took to avoid the giving them any cauſe of diſpleaſure, even to the rejecting (for their reſpect) the means which were offered us from all parts for our ſafety, gave us cauſe to believe, that ſuch a Comportment as this was, being ſo neat and obliging, ſhould not onely ſtop the effects of their Arms, by taking away all the Cauſes, but ſhould alſo have touched them with tenderneſs for the Innocence of an Infant, a Couſin, and a Brother-in-Law, to let him paſs his younger years in the quiet of a Peace, which the King his Father had ſo dearly bought for him. And though the Succours which* France *ſent from time to time*

into Portugall (*and that too before they could pretend to the effect of this imaginary* Devolution) *were manifeſt diſcoveries, that the Faith of Treaties & of Oaths were much inferiour to the Intereſt of State; yet we flattered our ſelves, that the longanimitie of our Patience might ſhelter us from receiving new injuries at their hands, by diſſembling our ſenſe of the firſt, and that they would be aſhamed to heap ſo many without interruption the one upon the other.*

But having heard that the ſame Libells had been ſolemnly preſented by the * French *Embaſſador to the States of the* United Provinces, *and to the Imperial Diet, and divers Princes of* Germanie; *I thought that I ſhould be wanting in all that I owe to my King, my Countrey, and the Publick, as well as to my ſelf, if I did not employ the little knowledge and light which*

* Monſieur de l' Eſtrade.

which God hath given me, towards the removal of the falſe Impreſſions which the artifice of a ſlight Eloquence, much more then the ſolidity of Reaſons, might produce in the opinion of credulous ſpirits, not throughly verſed in our Laws and Cuſtomes. Beſides, methought that I owed this Conſolation to the afflicted people, and this ſatisfaction to the neighbouring States, to let them evidently underſtand, that all the Pretexts with which the French *do labour to diſguiſe the vaſt Deſigns that they have in hand, are but falſe colours to maſk the true Spring which gives the Motion to this Machine, and to make an Ambition which goes at a great pace to the* Univerſal Monarchie *paſs under the veil of Juſtice.*

Which conſideration hath induced me ſeriouſly to weigh theſe Writings, and maturely to examine all the Reaſons, Ends and Circumſtances of them: And after

having

having carefully turned over all the Acts, (as much as the ſhortneſs of time and the confuſion of the preſent Troubles would give me leave) and examined the Treaties of Peace *and* Marriage, *with the Act of* Renunciation, *and conſulted the moſt expert Civilians that are amongſt us in the Practick and Cuſtomes of places; I found, without any preoccupation of minde, theſe Pretenſions not onely to be contrary to publick Right, to the Cuſtomes in Sovereign Succeſsions, and the ſincere Faith of Treaties, which are made betwixt Crown and Crown for the Tranquillitie of the People, and the Conſervation of Monarchies; but even to that particular Right which regulates private Families, and thoſe Municipal Cuſtomes which every Nation doth preſcribe unto it ſelf, by the will or permiſsion, either expreſs or tacite, of their Sovereigns. I have beſides obſerved ſo many evident Falſhoods in the*

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matter of Fact, ſo many inſupportable Invectives againſt the Perſon of the * *late King of moſt Glorious Memory, ſo great a number of malicious Artifices to pervert the people, ſo many hyperbolical Exaggerations to caſt duſt in the eyes of the neighbouring Princes, and ſo many pernicious Maxims, which draw along after them a train of Conſequences moſt dangerous for all Chriſtendome; that I had a great deal of difficultie to conceive how people, who make profeſsion of Learning and Knowledge of the Affairs of the World, durſt expoſe to publick cenſure things ſo ill digeſted: which hath the more encouraged me to undertake this Work, by reaſon that I foreſee how much it imports, not to ſuffer a boldneſs (which ſo freely abuſes the patience of the Readers) to paſs unchaſtiſed; and the Intereſt which all States have in this Affair makes me aſſuredly believe, that I do plead*

* PHILIP the Fourth.

in

in this the Cauſe of the whole World. It is, I confeſs, a matter of trouble to ſee my ſelf obliged to reduce to the terms of litigious pleading a Difference between Sovereign Princes, ſo ſolemnly decided by a publick Treatie, upon the Faith whereof all Chriſtendome did ſolely found their Quiet. But as a good Cauſe fears no Judge, nor a good Conſcience any kind of Cenſure; I will freely enter the Liſts, and ſhall be overjoyed to have as many Witneſſes of the Juſtice of our Cauſe, as there be reaſonable and diſintereſſed perſons in the World.

Though we cannot doubt of the Approbation which the moſt Chriſtian King hath given to thoſe injurious Writings, I cannot yet be perſuaded that he ever took the pains to reade them over, and will rather believe (to his honour) that his weighty Affairs, and his great application to this loftie Arming, have ſo taken up all his time,

time, that he had none to ſpare to caſt his eyes upon works which have ſo little ſympathy with his Genius and Qualitie. It is much eaſier to believe, that truſting in this to the faith of others, he hath abandoned himſelf to his natural propenſion to immortalize his name by Arms and Conqueſts, and to the Suggeſtions of thoſe who deſire nothing more then to ſee him incumbred abroad for their ſelf-ends. In effect he hath too much Generoſity, and Love for the Queen his Conſort, to ſuffer that any ſhould ſo unworthily defame the Reputation of his Father-in-Law; he is too much concerned in the common Cauſe of Kings, to endure that his Scribblers ſhould attempt upon Royal perſons; he hath too much Juſtice, to permit that they ſhould make the moſt tender Father and beſt of Kings paſs for a Tyrant, conſtraining his Daughter, by a barbarous Disinheriting her, or a Cheater, who aſ-

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ſigned her onely an Imaginary Portion; he hath too great a minde, to approve of triſling upon Jewels, or to deſire that an accompt by way of Inventory ſhould be given him of all the Knacks which belonged to the Queen his Mother-in-Law, and that all the Earth ſhould be alarmed about a Domeſtick concernment, which the relations of the parties would decide without noiſe amongſt mean Citizens: he knows that the Bounty of the King his Father-in-Law towards a Princeſs whom he loved more then himſelf did not reſtrain it ſelf to Notaries Clauſules; that both before and after the Marriage he ceaſed not to load her with his Benefits; and that he hath freely beſtowed his Provinces and Dominions, to ſet upon her Head one of the faireſt Crowns in the World. In fine, he hath too much Prudence and love for Truth, ever to conſent to the publication of ſo many falſe Allegations

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ſo inconſiderately packed together one upon the back of another; not queſtioning at all, but if that he had attentively conſidered them, they would have touched him with juſt indignation againſt thoſe who have ſo impudently abuſed his Name, as to ingage maliciouſly his Reputation and his Arms in an Enterpriſe ſo ill grounded.

Which makes me hope that (having eſtabliſhed his Majeſtie's Rights upon unqueſtionable Foundations) the ſoliditie of our Reaſons will not onely conduce to fortifie the People, and perſwade the neighbour-Princes, but even pierce the heart of the moſt Chriſtian King; and that yielding to the ſtrength of their Evidence, he will reſolve henceforwards to propoſe juſter and more plauſible matters to himſelf, whereby to make his Name famous, then in the unworthy Oppreſſion of a Pupill King; or at leaſt that he will contrive

ſweeter and more honeſt ways in order to his full information. But if by ſecret Judgments of God we cannot obtain by this means that which we ought to promiſe to our ſelves from the Prudence and the Equitie of ſo Great a King; I ſhall yet have this ſatisfaction, to have omitted nothing on my part that might contribute towards the diſſipation of this Tempeſt, which threatens all Chriſtendome; and having overcome by Reaſons, we hope that the Arbiter of Sovereigns and ſupreme Protector of Juſtice will not let us ſink under the weight of his Arms.

To make fully known in the eye of the Sun the Deformitie and bad Connexion of thoſe ſeditious Writings, it would be neceſſary to anatomize them, and examine every piece apart. But as that deſign would engage me to a large Volume, and that time for the preſent is too precious; I have thought that it ſhould now ſuffice to

collect

collect onely the principal Points, to destroy their Grounds, and eſtabliſh contrary Foundations, and to goe (without ſtopping at a thouſand Superfluities, which they have alledged out of all ſeaſon onely to make the bulk of their Books bigger, and to embroil the minde of the Reader) directly to the ſubſtance and the heart of the Difficulty in queſtion. This ſhall be my endeavour; and in this I require in the Readers an attention void of intereſt, if yet they can be without intereſt in a Cauſe which ſo nearly toucheth them by an inevitable reflexion.

Though I have propoſed to my ſelf in this Writing all the Moderation and Sweetneſſe which decency and inclination towards Peace doth require; yet the matter is of it ſelf ſo very ſharp, that it is almoſt impoſſible to give it a form that ſhall not participate of its roughneſſe. It's here intended to make the whole

World ſee, That a War is unjuſt, the Ground of it ruinous, the Reaſons for it vain Pretexts; That the Apparences cover vaſt Deſigns; That the Allegations are falſe, the Proceedings violent, the Ends naught, and the Conſequences dangerous. The neceſſitie of a juſt Defence doth obligè us to bring to light all theſe Truths: and I defie the moſt dexterous Pens to be able to expreſs them in terms void of ſome Bitterneſs, or to apply the Razor to the bottome of the Wound without Pain to the Patient. I wiſh I were able to make things underſtood without naming them, and to colour them with obliging terms: but this cannot be done without deſtroying the Subſtance; and this Maſk of words would paſs for a jearing ſharper then ſingle Expreſſions. I beſeech the Reader to be perſuaded that my onely drift is, to ſpeak of Things without touching of Perſons; and if my Subject doth forcibly

forcibly draw me into complaints and ſome reproches, I do here ſolemnly proteſt, That I pretend the moſt Chriſtian King's Sacred Perſon to be excepted; and that I do aſcribe all the Evils which are intended towards us onely to thoſe mean Incendiarie Writers, who, out of a deſire of Nove'tie, and perhaps with purpoſes more dangerous to their own King then to ourſelves, have ſo lightly and unſeaſonably ſounded to horſe.

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THE BUCKLER OF *STATE & JUSTICE* AGAINST

The Deſign manifeſtly diſcovered of the *Univerſal Monarchy*, under the vain pretext of the Queen of *France* her Pretenſions.

ARTICLE I.

Of the Ends which FRANCE propoſeth unto it ſelf in this War, and in theſe Libells.

THE Author of theſe Libells employs a great deal more of care and art to colour the Deſigns of his Party, then to eſtabliſh the Grounds of his imaginary Right. In this laſt his Pen is both dry and

and crawling: In the other it doth ſpread it ſelf with a pleaſant ſtream of words into a Thouſand ſuperfluous expreſſions, endeavouring as much as it can to preſent without diſcovery a falſe Light, hoping to change the Nature of things by changing only their Names. He extolls the love which his Maſter hath for Peace, at the very inſtant when he is breaking it; he complains at the ſame time when he ſtrikes; he takes away by violence, when he asks; he pleads and decides at once; he requires Peace, and brings War; attaques without Rupture, forces without conſtraint, and plaies with ſo much contempt upon the Ignorance and Credulity which he ſuppoſes to be in the Judgment of his Readers, that he will needs have the way of Fact to paſs for Juſtice, Violence for Moderation, Uſurpation for Title, and Defence for a Crime: and ſo he can but onely take away the odious name of *War* from the Attempt which *France* is now making, he thinks that ſhe may freely

freely practiſe all manner of Hoſtilities under that of *Peace*: Which is the effect of the excellent opinion they have of the abilities of all other Nations, whom they eſteem barbarous or ſimple enough to believe things of this nature, and afterwards glory in their jeſting, (according to their obliging cuſtome of turning into ridiculous the moſt Illuſtrious Nations) That they took us for *Germans*.

This dull conceit tends evidently unto two Ends: The one, to extenuate a little the uglineſs of their Enterpriſe, and the Scandal and Confuſion which they foreſee it will produce throughout all *Europe*: and that they may make all the cares which we ſhall take for our Defence paſs for as many Contraventions of the Peace; and by this means get ſome pretext whereby either they may preſs their Allies to joyn their Arms to theirs, in favour of their Deſign, or elſe may one of theſe daies bring the War upon themſelves, for having

ving failed in performing the Obligation of their League of Warrantie. By which it is obvious to all ſorts of capacities, that the *Abſolute Empire* which they do equally affect over their Friends & Enemies makes them act ſo Magiſterially both with the one and the other: So that to keep Peace with them, it is requiſite to give them all that they require; and to ſatisfie the Alliances made with them, it's neceſſary to help them to take all.

But to judge of the injuſtice of this Pretenſion, it is ſufficient to read over the Treatie of *the Peace of the Empire*, in the Article of *Warrantie*, and that of the League of the *Rhine:* and then it will be clearly ſeen, that the Obligation of reciprocal Succours doth extend no farther then to thoſe Lands which *France* did poſſeſs in the Empire at the time when theſe Leagues were concluded; that they do not reach any new Conqueſts or Claims, and ought not to be underſtood but againſt Aggreſſours: Elſe the Princes of the Empire had impoſed an horri-

horrible Servitude on themſelves, to be the Miniſters and Inſtruments of the Ambition of an Allie, to inlarge his Limits at the price of their bloud and of their own ſafetie, and to be bound to take arms into their hands as often as the Writers of *France* ſhould think fit to put their hand to the pen, to frame to their Crown ſome new Rights.

It is not enough to underſtand the cunning of the Ends of their proceeding, but it concerns all the World to penetrate farther, even into the bottome of their Deſigns. If we will take it upon their faith, they have no other End but an honeſt Accommodation with *Spain*; They themſelves invite Forreign Princes to intermeddle in it; They proteſt that they will ſuffer themſelves to be brought to moderate Conditions, That they do make War againſt their ſtomachs, That they would lay down their arms with pleaſure, That they would ſubmit themſelves to the Judgement of thoſe who are willing to imploy their

pains

pains in it. Let us ſee then whether their behaviour doth ſuit with their words. —*Spectemur agendo.*

All their Actions and Motions tend towards a vaſt and deep Deſign. This proud arming, this prodigious expence, this exceſſive profuſion in their forreign Negotiations; this forwardneſs in making of Leagues, to gain Miniſters, to keep them in buſineſs who may give them jealouſie; the reiterated inſtances and the large offers which they have tendred to the *Swedes* to embroil the Empire; the extraordinary application to force the *Polanders* by corruption and violence to chuſe a Succeſſor contrary to their Fundamental Laws; are proofs capable to convince the darkeſt underſtandings, that all this immenſe Preparation of Arms and Intrigues hath ſomething in it of greater extent then the bare Conqueſt of ſome Provinces, (which our over-much Credulity hath expoſed to them as a prey) and ends not in a ſimple deſire of tearing away a few pieces of them by a Treatie.

Treatie. Theſe huge Mountains are not to bring forth Mice, but to vomit out Flames as the *Veſuve*, to ſet the whole neighbouring Countries on fire.

The firſt * Governour of the moſt Chriſtian King hath given him for a Modell the Life and Deſigns of his Grandfather *Henry* the Fourth, as may be ſeen in the Book which he hath publiſhed. This Prince, as well by his own Genius, as by the happy ſucceſs of his firſt Undertakings, hath reliſhed ſuch Inſtructions, and hath ſolelie propoſed to himſelf this Example for the Rule of his Actions. The Hiſtory of this Great King hath been his moſt ordinary ſtudy: He hath, in imitation of him, taken great care to accumulate much Treaſure, ſought for Alliances abroad, and at length hath raiſed moſt powerfull Armies. We muſt therefore conclude, that he acts upon the very ſame Draughts; and that all we ſee at preſent are but renewed Projects, and the effects of thoſe Impreſſions which he hath ſucked in with his milk. To draw the Conſequences

* The Biſhop of *Rodes.*

ſequences from theſe Principles we need onely reade the *Memorials* of *Henry* the Fourth, thoſe of the Preſident *Jannin*, and of the Biſhop of *Rodes*; and conclude, that whatſoever that Potent King had conceived in his imagination, this King intends to bring forth by the power of his Armies. But as the deſire of Glory hath no bounds, and that his years and preſent condition put him in a capacitie to run a longer courſe then *Henry* the Great; ſo we cannot reaſonably expect that the ſwiftneſs of the *Rhine* ſhall be able to ſtop him.

His Writers have taken a great deal of pains to nouriſh him in theſe thoughts: and as that ſort of men have no other ſtudie but to obſerve the weakneſs of their Prince, the better to inſinuate their Flatteries, they have freely ſacrificed their mercenarie Pens to tickle this natural deſire of Glory which they have diſcovered in him. The Rewards they have received are authentick marks of his Acceptance; and this acknowledgment in a young

a young ſpirit, that believeth himſelf to be in a poſture to execute all that pleaſeth him, and which hath drunk in this Maxime, That to take poſſeſſion by the Sword any Title is ſufficient, muſt needs be eſteemed a dangerous forerunning Sentence againſt all thoſe upon whom he ſhall believe that he hath any thing to pretend.

Which yet more clearly to make appear to us, we onely need reade the printed Books which have lately been dedicated unto him, and principally one above the reſt, which carries the Title of *THE JUST PRETENSIONS OF THE KING OF* FRANCE *TO THE EMPIRE*; where having laid down for a Ground, That the Dominions of Sovereign Princes have always been the Dominions and Conqueſts of their Eſtates, and, That the Dominions and Conqueſts of Crowns can neither be alienated nor preſcribed; he adds the two Articles following: 1. That *the greateſt part of* Germanie *is the Patrimony and ancient Inheritance of*

French *Princes*: 2. Charlemagne *did poſſeſs* Germanie *as King of* France, *and not as Emperour*. I leave to thoſe who will vouchſafe to reade over this Treatiſe, to form the Conſequences from ſuch Premiſſes.

If one may judge of what is to come by what is paſt, all *Europe* will have cauſe enough to ſtand upon her guard, if it doth but reflect upon the conduct of *France* ſince the cloſe of the *Pyrenean* Peace till this minute. Hardly did we ſee that Treatie eſtabliſhed upon the moſt religious and inviolable Laws that humane Prudence could deviſe, when preſently, upon a ſmall punctilio of difference for the precedency of Embaſſadors, (which had been always in diſpute, and was left undecided by the Peace) they proceeded to the uttermoſt extremities againſt a Father-in-Law, at the ſame time when they ſuffered without murmuring the unheard-of Indignities which the Grand Vizier at *Conſtantinople* cauſed to be committed againſt the Royal Perſon of the moſt Chriſtian

Chriſtian King in that of his Embaſſador; and when they did admit, without taking the leaſt offence thereat, the Competition for place betwixt the *Swediſh* Embaſſadors and theirs: which is ſo much the more remarkable, that even in the *Pyrenean* Treatie the two Crowns marched equally hand in hand together; and that in one of the Inſtruments thereof *Spain* was the firſt nominated, and in the other *France*. Why then did they conclude the Peace with this Equalitie, if they were reſolved to break it afterwards upon the point of Competition? Which makes it evidently ſeen, that from the very day of the Peace they have always watched for the occaſions of War, and concluded this Treatie onely to take a little breath to ſettle their Revenues at home, and make an end of reducing their people under the yoak.

The Bonefires which were every where kindled for joy of the Peace were not quite extinguiſhed, when an evident breach of the Treatie was

ſeen by the Succours which *France* ſent into *Portugal*; at the beginning under the name of the Marſhal of *Turenne*, and a little while after without any kind of diſguiſe. A Sedition which happened at *Rome*, to the great diſpleaſure of the Pope, by the Souldiers who were provoked with an infinity of Inſolencies committed by the *French* Embaſſador's Familie, was near putting all *Italy* again into Combuſtion, had not the tears of his *Holineſs* ſtopt it, by ſacrificing his own Kindred, and erecting a Pyramide to *France* for an unworthy Trophie of the ſpoils of the glory of the Vicarie of *Jeſus Chriſt*, and the common Father, of whom they ſtyle themſelves the Eldeſt Sons.

The Duke of *Crequy.*

A little after they obliged the Duke *Charles* of *Lorrain* to ſell them his Dutchy, to the prejudice of the lawful Succeſſor: and the Contract not being valid, they forced him with violence to put the onely place which was left him into their hands; by means whereof (revoking their Bargain)

gain) they got the thing without paying the price.

The Biſhop of *Munſter*, who was included in the League of the *Rhine*, ſeeing himſelf attaqued in the Empire by the States of *Holland*, in vain implored their aſſiſtance, by virtue of the Warrantie: but when he began to reſent it, he was ſtraight aſſaulted by the *French* Troups: and if his own Enemies had not ſhewn more moderation towards him then their Allies, his Countrey (which is of the Patrimony of the Church) had been at preſent totally reduced into Aſhes.

The War of *England* againſt the States of the *United Provinces*, which was raiſed by the *French* practices, and fomented by their induſtry, in giving the counterpoiſe to him who for the time appeared the weaker, hath ſufficiently inſtructed all the World, that the Game of *France* is to depreſs all Powers which are capable of obſtructing the torrent of their Enterprizes.

But to ſtray no farther from the

matter which I have in hand, I will be contented to note onely two plain Arguments, which do evidently prove that their Design is to drive on their Conquests as far as ever the fortune of War will suffer them, and that those Overtures of Peace which they do make are but to amuse the neighbouring Princes, and to bridle their own Subjects; believing that the first will not have recourse to Arms for hindring their progress, so long as they have any hopes to get it done by Negotiation; and that the others, terrified with the apprehension of the quick end of this War, shall not dare to make use of any occasion which they will hold to be uncertain and staggering.

The first Argument is, That at the instant when they profess to seek Peace, they have laid an essential Obstacle in the way, by concluding a League offensive with *Portugal* for ten years; by the which they binde themselves not to treat, unless the *Portugueſe* may be intirely satisfied.

They

They are not ignorant how exorbitant the demands of that People are, and that this is to touch *Spain* in the apple of the eye, and put the ſame ſtop to the Peace which was the principal Difficultie in the Debates of the *Pyrenean* Treatie. The ſame League carries (as it is written from *Lisbon*) that all the Harbours which the *Portugueſe* ſhall take in *Spain*, either upon the one or the other Sea, ſhall be put into the power of *France*: which directly correſponds to the Deſign which they have of late framed, to make that Kingdom abſolute Miſtreſs * of the Trade. All this hath no connexion with their Claim to *Brabant* and the other Provinces: and if they had no other Deſign then to take poſſeſſion of their pretended Goods, without breaking the Peace, they would not contrive the acquiſition of Ports where they themſelves confeſs that they have nothing to pretend.

* Of this Article England had need take care.

The ſecond is, That at the ſame time when they proteſt they have no

deſign to break the Peace, they labour to deſtroy the Foundations of it; and to take away all hopes of a Reconciliation, by annulling the Queen's Renunciation, upon which the whole *Pyrenean* Treaty doth ſo lean, that in caſe this *Baſis* ſhall be overturned, of neceſſity the whole Fabrick muſt fall. If this Renunciation doth not ſubſiſt, there is no way left for an Accommodation, nor means of finding any ſecuritie neceſſary to it. The Peace which ſhall be made cannot be but the ſeed of a new War; it will be impoſſible to cut the evil by the root. 'Tis here where the Mediators ſhall find themſelves puzzled: and if all their Pretenſions be granted, then will they be abſolute Maſters of the *Netherlands*, and in a condition to take poſſeſſion by the ſame Title not onely of that part of *Brabant* of which the States of the *United Provinces* ſtand poſſeſſed, but alſo of all the reſt of their Countreys, as I ſhall make appear more at large in the Fifth Article. If they adjudge unto them

them that part which we hold, they give a previous Sentence againſt themſelves, and will be condemned by their own Decree. But if *France* content it ſelf with a part, it will be needful that the Queen ſhould paſs a new Act of Renunciation touching all the remainder, which, according to their Principles, muſt be ſubject to the ſame cauſes of Nullity that the firſt is; if it be true that Princes can never lawfully renounce their pretended Rights: And I do not ſee how they can finde new Clauſes nor new Oaths to make this Act more irrevocable then that which they ſeek to deſtroy. However, though all they ask at preſent were granted them, nothing could be ſolidly treated of, becauſe by annulling the Renunciation we ſhould open a door unto them to bring in a new Pretenſion upon all the Monarchie; and then muſt the Peace needs be as brittle as is the life of a young Infant, who hath yet a thouſand dangers to go through before he can reach to thoſe years in which

which he ſhall be able to ſecure the Succeſſion in his own Line, and cut off the courſe of the vaſt hopes of thoſe who build the deſign of an *Univerſal Dominion* upon his Death. In a word, it is ſuperfluous to reaſon by Arguments, when the things do ſpeak of themſelvs. The moſt Chriſtian King had the goodneſs to undeceive us in the vain hopes of a Peace, by a Letter written by his order to the Marqueſs *de la Fuente*, upon the Offer made by his Excellency the Marqueſs of *Caſtel-Rodrigo* in moſt reſpectful terms, to enter into a Treatie of Accommodation, and remit the buſineſs to the Arbitration of the neighbouring Princes; by his Anſwer he doth not onely reject the Propoſition, and look upon it as an injury, but he frames to himſelf a voluntary impoſſibilitie of a Peace, which he eſtabliſheth upon the Reply of our Queen to the Marqueſs *de la Fuente*, in proſecution of a Diſcourſe which the Queen of *France* had ſlightly intimated to the ſaid Marqueſs by way of

of Converſation, and ſtrives to ſettle upon ſo weak a ground-work not onely the Juſtice of his Arms, but alſo an eſſential Obſtacle to a Reconciliation.

By all theſe palpable Verities, which cannot be called in queſtion, it is eaſie to diſcern, That *France*, imploying her endeavour to render the Peace impoſſible or unſure, aims abſolutely at the intire Deſtruction of a Monarchy which is the Bulwark of all the reſt, that ſhe may attaque them with leſs trouble, having thus beaten down their Flankers. It is left to wiſe Politicians to make neceſſary reflexions upon a matter of ſuch high concernment.

ARTICLE II.

That the Entrie of the King of France *into the* Low-Countreys *is a true Rupture.*

THe *French Academy* hath of late taken a great deal of pains in the poliſhing of their Language, and hath given it ſelf the liberty to reform in it many words, to adde ſome, and to enrich it with many graceful expreſſions: But I never could finde that ever it called *War* by the name of *Peace.* The *Latines* indeed, by an Ironical Figure, have named War, *Bellum*; and it may be in imitation of them this ingenious Writer would make us believe that Hoſtilities are Gallantries, and the preparation for a great Army but a Turnament.

Conjugium vocat, hoc prætexit nomine culpam.

I deſire very much that he would explain

explain unto us what he means by the word *Rupture*, and how he can reconcile a violent Intruſion by the power of men and Cannons with the due obſervation of a Treatie, which in the firſt place doth prohibit all manner of ſuch armed attempts, and which is inſtituted to no other end but to hinder them. I would know how he can make the Peace ſubſiſt with the moſt lamentable effects of War; and how that by the onely defect of the formalitie of ſending a Herauld at Arms to denounce it, it loſes all its bitterneſs and injuſtice. For my own part, (who uſe to reaſon more dully) I have always held that to be a Rupture which is inconſiſtent with the eſſence of Peace, which overthrows the foundations and troubles all the harmony of it. There are certain Attempts which may alter a Peace, and yet not break it, which be rather Contraventions then Infringings, and which do not give the parties injured the right of Revenging themſelves by Arms, but onely to pretend Repa-

ration

ration by more gentle means. The *Turks* do not eſteem to be a Rupture the Incurſions which are made by the one or the other partie in times of Peace, provided they be not accompanied with Infantry and Cannon. But when one doth act by open force with the full bodies of an Army, followed with all the Train neceſſary for great Enterprizes; that Subjects are ſolicited to rebell againſt their Prince, and that they are compelled under the penalty of the Confiſcation of their Goods to take an unjuſt Oath, without proceſſe and without forme of Law; I do avow that I am ignorant what either Peace, War, Treaties, or Ruptures are, if all theſe things can have any compatibilitie together at the ſame time. It is a new knowledge in Law whereof the Ancients were ignorant, who have left us an Inſtruction totally oppoſite to this doctrine: *Hoſtes non ſolùm exiſtimantur qui jam navali aut terreſtri prælio certant, ſed pro talibus habendi & qui machinas admovent portubus*

Philo *de Legibus.*

tubus aut mœnibus, etiamſi nondum pugnam incipiunt.

But that we may be the more able to judge in this buſineſs, it is neceſſary that we examine all the terms of the Treatie of Peace, and conſider the nature, the effects and the ends of the ſame; to conclude that if all thoſe be deſtroyed by this Invaſion, it cannot be called by any other name then by that of a manifeſt Rupture.

The motive Cauſe of the Peace was, *The deſire of the good, quiet and eaſe of their good Subjects:* The Object was, *To put a period to ſo many miſchiefs:* The Effect, *To forget and extinguiſh all the cauſes and motives of the Warrs paſt, and to eſtabliſh a ſincere, entire, and durable Peace betwixt them and their Succeſſors.* All theſe are overthrown by this preſent Attempt, which doth trouble the good and tranquillity of the people, renew the publick misfortunes, rekindle and reſuſcitate all the cauſes and motives of the Warrs paſt, and raiſe new ones. I do not ſee how one can conceive

that

that Peace ſhould ſubſiſt with an Invaſion, which ruines it in its Cauſe, in its Ends, and in all its Effects.

Moreover, if the Entry of the moſt Chriſtian King into theſe Provinces be but a ſimple taking of poſſeſſion, yet is it altogether illegal, contrary to the Laws of Nations, and to the cuſtomes and practice of the Civil and Municipal Laws, as I will make appear in the Article following; and what colour ſoever theſe do put upon it, it cannot paſs but for the way of Fact, which is never permitted except by the Law of War. So that by endeavouring to take away the name of *War* from this Invaſion, they do deprive it of that Veil which was able to cover it at leaſt with the falſe appearance of the Right of Arms, and manifeſtly conclude, that if it be not a Rupture, 'tis a violent Intruſion; if it be not a War, 'tis a Depredation and Piracie; and if it be not an infringing of the Peace, it is an unjuſt Attempt, which gives a ſhock to all Laws and Forms. Thus are the

French

French intangled in their own Nets, and thinking to make their Cauſe plauſible, or leſs odious, by a Subtiltie which hath neither body nor ſubſtance, they deſtroy the principal Foundation of it, and take from themſelves the means of eſtabliſhing their Conqueſt upon the right of War, by declaring that they will Conquer without breaking the Peace. *Hoſtes ſunt qui nobis, aut quibus nos publicè Bellum decernimus: cæteri Latrones aut Prædones ſunt.* L. *Hoſtes, de verb. ſignif.*

We do ordinarily diſtinguiſh betwixt Contravention, Infringing, and Rupture. The firſt is but an Abuſe either in action or omiſſion contrary to ſome particular Condition, which hinders not the exiſtence of a Treatie in its integritie, and onely affords the parties concerned a right to pretend that the Dammage be repaired. The ſecond ſhocks the ſubſtance of the Peace, overthrows the Ground-work of it, and gives a right to purſue ſatisfaction by Arms, if it cannot be obtained by any other

way. The third conſiſts ſimply in thoſe acts of Hoſtilitie which are incompatible with Peace, which is in one word when one purſues his Right by force: And War, according to the opinion of Civilians, is nothing elſe but *A Contention by ſtrength of hands and by violence of Arms.* Others take the word Rupture more at large, and extend it to three caſes: The firſt, to every Act which is againſt the nature and ends of Peace: the ſecond, to the committing or omitting of ſomething which is contrary to the expreſs tenour of the Treatie: the third, to the making of ſome Attempt which brings Conſequences along with it incompatible with all that can be underſtood by the name of Peace. *Grotius lib. 3. cap.* 20. Theſe three Conditions meet here: there is open Force; there is an expreſs Contravention to the moſt eſſential Articles; and Conſequences which induce an irreparable Damage.

The Contravention to the Treatie

on

on the part of *France* may evidently be proved by a multitude of Acts repugnant to the ſinceritie of that Friendſhip which the two Kings promiſed each other, which is the chief End of this Peace, and which overthrows the Conditions agreed on betwixt them. The ſecret practices, both within and without the Realm, have never ceaſed ſince the Peace; thus to keep the Monarchy at a check, and to raiſe enemies and enviers to it from all parts. The *Portugueſes* have almoſt totally ſubſiſted ever ſince upon the proviſion of Corn which hath been ſent them out of *France*; and in all the Debates which have happened either touching the Execution or the Interpretation of the Treatie, or the Purchaſe of *Dunkirk*, they have alwaies alledged unto us their Will in place of all other Reaſon, offering to give us the Law even in our own houſes, and to forbid the reparation even of our own Chanells; ſo that upon the leaſt difference wherein we did not yield unto them without re-

ply whatever they asked, they have preſently returned the bargain in our hand. If any Leagues were propoſed for our Defence onely, inſtantly they thundred out againſt us menaces of War; which was a word ſo frequently in the mouth of the Archbiſhop of *Ambrun*, that upon buſineſs of no value, and between private perſons, he inſtantly made a publick concernment. In fine, they have made uſe with ſo much exorbitancie of the ſtrong Inclination which they obſerved in us for the preſervation of Peace, that they have ſtill imployed, upon the ſlighteſt occaſions, the Scare-crow of War, thinking thereby to pull from us all that their humour made them deſire.

Though our condition were very unfortunate to live in this continual Diſquiet, to ſee the Sword alwaies hanging over our heads, and our Repoſe tied to ſo ſmall a thread: yet the remembrance of our former Sufferings, and the apprehenſion of what might come hereafter, made us preferre

ferre an uncertain and tottering Reſt before thoſe inevitable Confuſions and Troubles which a Rupture would produce; and expect that our Moderation might touch their hearts, or that the Divine Providence would by ſome other means provide for our ſafety. But this Patience of ours hath ſerved them for a Ladder whereby they have mounted to open Infringings of the Peace, which cannot admit of any Interpretation or Extenuation: And I defie all the ſubtiltie of the *Gallicane* litigious Cavills, to palliate them with the leaſt pretext or meaneſt appearance of Juſtice. 'Tis here that I do intreat the Reader to ſhew me no favour, but to deveſt himſelf of all kind of Complacencie which perhaps he may have for us, to retain all his Partialitie (if any he have) for our Enemies, and to judge of our Cauſe with the uttermoſt of Rigour.

The Abandoning of *Portugal* is one of the eſſential Foundations of the Peace; without that it could never

have been treated of nor concluded: *France* doth declare it by theſe words, in the LX Article of the ſaid Treatie: *Foraſmuch as we have foreſeen and apprehended that ſuch an Engagement might be an Obſtacle not to be ſurmounted in the concluſion of the Peace, and conſequently reduce the Two Kings to a neceſſity of perpetuating the War.* And a little beneath in the very ſame Article it goes on in theſe terms: *In fine, in contemplation of the Peace, and ſeeing the abſolute neceſſity wherein his moſt Chriſtian Majeſtie finds himſelf, either to perpetuate the War by a Rupture of the preſent Treatie, which he perceives to be inevitable, in caſe he ſhould have perſiſted to obtain in this Affair from his Catholick Majeſtie other Conditions then theſe which he had offered,* &c.

'Tis clear in the ſecond place by the ſame Article, that to oblige *France* to this Abandoning, the King of *Spain* refuſed from the moſt Chriſtian King the Reſtitution of all thoſe places and Dominions upon which the Arms of

France

France had ſeiſed during the War. The terms are clear in the ſame Article: *Offering, beſides the places which are to be reſtored unto his Catholick Majeſtie by the preſent Treatie, to render unto him alſo all the other Conqueſts in general which his ſaid Arms have made in this War, and intirely to reſtore the Prince of* Conde; *providing, and upon condition, that the Affairs of the Kingdome of* Portugal *ſhould remain in the ſtate in which at preſent they are.*

'Tis likewiſe out of controverſie (every way) that this Abandoning of *Portugal* was covenanted and promiſed by *France*, ſo authentically and in ſuch clear and ſpecial terms, that it cannot be called in queſtion, nor be made ſubject to any Interpretations contrary to the true ſenſe and intention of the Parties contracting. Here you have the terms: *His ſaid Majeſtie ſhall meddle no more with the ſaid Affair, and doth promiſe and oblige himſelf upon his Honour, and in the Faith and the Word of a King, for himſelf and*

his Succeſſors, not to give unto the aforementioned Kingdom of Portugal, *neither in general, nor to any perſon or perſons of it in particular, of what dignity, eſtate or condition they may be, neither for the preſent nor hereafter, any Aid or Aſſiſtance, publick or ſecret, directly or indirectly, of Men, Arms, Ammunition, Victuals, Ships or Moneys, under any pretext, nor of any other thing that is or can be, by land nor by Sea, nor in any other faſhion: as likewiſe not to permit that any Leavies ſhall be made in any of his moſt Chriſtian Majeſtie's Kingdoms and Eſtates, nor grant free paſſage to thoſe which may come out of other Countries to the help of the aforeſaid Realm of* Portugal.

'Tis no leſs evident that they have failed in every point and every circumſtance of this Promiſe; That from the very beginning they ſecretly conveyed Troops into *Portugal* in ſeveral bodies; That at the ſelf-ſame time when, upon the complaints of the Marqueſs *de la Fuente*, they ſent publick

publick Orders to the Governours of their Ports, that no Souldiers ſhould be ſuffered to imbark for *Portugal*, they did not abſtain from making them paſs under-hand and by connivence; That a little while after the Marſhall of *Turenne* publickly made Leavies for their aſſiſtance; and that the Marqueſs *de la Fuente* having repreſented that this was a direct Contravention to the Treatie of Peace, they pay'd him with this cold and diſdainfull Anſwer, that it was a particular act of the Marſhall of *Turenne*'s, in which the Court of *France* had no hand; That they continued to provide them with Corn and all other ſorts of Ammunition for War: And all this whilſt the effect of the pretended *Devolution* was yet uncertain, and could no waies operate even among private perſons, unleſs the Daughter did ſurvive the Father, and before ever the *French* made any Inſtance or Overture touching that Pretenſion.

We have in our hands the Letters inter-

intercepted, which make faith that the Court of *France* hath ever ſince the Peace fomented the Obſtinacie of the *Portugueſes*, that ſhe hath hindred them from accepting the advantagious Conditions which were offered them, animating them by a hope of mightie Succours not onely for their own Defence, but alſo for carrying an Offenſive War into the very heart of *Spain*: We have many Letters of Monſieur *de Lionne* and the Archbiſhop of *Ambrun* to Monſieur *de Shomberg*, which prove the continual Correſpondence which was betwixt them, for the direction of that War. No body is ignorant how the Duke of *Beaufort* the laſt year came with his whole Fleet upon the Coaſts of *Portugal*, where he ſpent a part of the Summer, to the great prejudice of his Allies, onely to ſecure the paſſage of Victuals and Ammunition, whereof the *Portugueſes* were in extreme want; and that at the ſame time when they were offering us their Mediation to work an Accommodation with

Portugal.

Portugal. All the World knows that Monſieur *Colbert* privately made ſeveral voiages thither, to encourage them, and contract a ſecret Alliance with them: That the Sieur *Courtin*, a little while after the cloſe of the *Pyrenean* Treatie, went expreſsly into *England*, to move the King of Great *Britain* not to abandon the *Portugueſes*. We intercepted in a *French* Bottom, which came from *Portugal*, the accompt of the Expences and the Succours which *France* hath given without intermiſſion to that Kingdome ſince the Concluſion of the Peace; whereby it is clear, amongſt other things, that the *French* have alwaies entertained Troups at their own charge to uphold this War.

And for the Maſter-piece of all theſe unjuſt proceedings, *France* it ſelf cannot deny, but that it hath lately concluded a League offenſive with that Kingdome againſt all its Enemies. The principal Conditions of this League are: *That they ſhall be the Friends of their Friends, and the Enemies of their Enemies,*

Enemies, excepting England: *That* France *ſhall furniſh them with as many men as they need, to carry on an offenſive War in* Spain *both by Sea and land; ſhall advance unto them by way of loan the half of their Pay, for the entertainment of Auxiliarie Troups; and that they ſhall furniſh them every year, under the ſame title of Loan, with the ſum of three hundred thouſand Crowns: That all the Ports which they ſhall take in* Spain, *either upon the one or the other Sea, ſhall be put into the power of* France: *That they ſhall not treat, neither of Peace nor Truce, without common conſent: That this League ſhall laſt for the ſpace of ten years.*

By the clauſes above ſpecified of the *Pyrenean* Treatie it may be ſeen, that the Abandoning of *Portugal* was both an eſſential and fundamental point of the Peace: That his Catholick Majeſtie preferred that Intereſt before all the Provinces, Eſtates, Dominions and ſtrong Holds which he quitted to *France*, and which he might have recovered, if he would have yielded

yielded in the Affair of *Portugal.* So that *France* doth not juſtly poſſeſs ſo many places as have been made over to her, but in ſo farre as ſhe hath ſatisfied the Condition in contemplation whereof they were given, and without which all would have been reſtored to us.

Whereby it is proved, that the publick and ſecret Aids which *France* hath given to that Kingdome, and particularly the League offenſive which ſhe hath concluded with it, are not ſimple Contraventions or Infringements, but an open Rupture of the Treatie of Peace, which reſtores his Catholick Majeſtie to the juſt right of pretending to and redemanding of whatever hath been accorded to *France* by virtue of this ſame Treatie, and all the Expence & Dammages which the continuation of this War, and the impediments which *France* hath brought to an Accommodation, have occaſioned to the Crown of *Spain.* This Concluſion is founded upon three invincible Reaſons.

The

The firſt is drawn from the Third Article of the Inſtrument of Peace, whereby it is agreed, That, *to avoid the Differences which may afterwards happen between ſome Princes or Potentates, Allies of the ſaid Kings*, &c. if they cannot reconcile them by their Interpoſition, and that the ſaid Allies ſhall therefore take Arms, *every one of the ſaid Kings may help his own Allie with his forces, without coming to any Rupture betwixt their Majeſties by reaſon of ſuch Aſſiſtance.*

But in the end of the ſame Article *Portugal* is expreſsly excepted. From whence may be deduced this evident Conſequence, That if the Treatie doth allow the two Kings to aſſiſt their Allies, without breaking of the Peace, *Portugal* excepted; it muſt follow that *France* cannot aſſiſt *Portugal* without Rupture, ſince that Kingdome is excepted by a clauſe reſtrictve of the general proviſion which is made for all the other Allies.

And in the cloſe of the ſame Third Article all manner of Succours is generally

nerally prohibited to be given *to the Subjects which might hereafter revolt againſt either of the ſaid Kings*, to limit the permiſſion contained in the ſaid Article of aſſiſting the Allies without Rupture, onely to Lawfull Princes and Potentates, with an abſolute excluſion of all Rebells.

The ſecond is, That the Treatie is trulie broken, when by an Attempt of one of the Parties it is reduced to ſuch terms in which it could never have been concluded nor commenced: *Lege quod ab initio, F. de Reg. Jur.* It is certain by the LX. Article above cited, and by the proper Declaration of *France*, That *this Engagement with* Portugal *was an inſuperable Obſtacle to the Concluſion of Peace.* It is then clearer then the day, that ſince the Peace could never have been made without the Abandoning of *Portugal*, it cannot ſubſiſt with thoſe Succours nor with that League.

The third Reaſon is, That by the League offenſive with *Portugal* they do declare themſelves Enemies to the

Enemies

Enemies the one of the other, *England* onely excepted. It follows then manifeſtly, that the Crown of *Spain* not being excepted, but on the contrarie this League being directly againſt it, his moſt Chriſtian Majeſtie hath declared himſelf an open Enemie to *Spain*, by concluding it with this Condition.

Let us add to all this the Hoſtilitie already begun againſt thoſe of *Armentiers*, the Detention of the Governour of that place, the Maſſacre of the Souldiers of the Garriſon; the Conſpiracy againſt the Town of *Luxemburg*; the Contributions which they have demanded from thoſe very Provinces that are not compriſed in this Pretenſion, to ſave them from fire and pillage; the Invaſion of *Charleroy*, which they fortifie; the ſacking and burning of divers Villages, even in the Countrie of *Liege*; the prophanation of the Churches and Holy places; and the taking of *Berges S. Winox*: And if all this cannot be called War, Rupture, and an Infringement

of

of the Treatie of Peace, I ſee not what names henceforth can be given to things to expreſs their nature.

After all this, the *Latin* Tranſlator of this Libell ſports himſelf wittilie with theſe majeſtical Hyperboles: *Rex Invictiſſimus* Galliarum, *non proferendi Imperii cupiditate, aut gloriâ Bellicæ laudis, ſed communi utilitate & Officii Religione compulſus, &c.* And farther, *Neque enim is eſt qui de inferenda finitimis cogitet injuria, aut in rem ſuam aliena convertere, aut aliorum demum invadere velit Imperia: unam præter cæteras Virtutes colit Juſtitiam; huic Coronam Sceptrúmque ſubmittit, &c.* He believes that to perſuade his ſaying is ſufficient, that his ſingle words ſhall be able to give the lye to all the contrary effects, and that Chriſtendome will give more credit to their Ears then to their Eyes and to their Experience.

ARTICLE III.

That this Rupture is unjuſt, admitting that the Rights of the moſt Chriſtian King were well founded.

THE Injuſtice of the Rupture, and the infringing of the Peace by the Succours which *France* hath ſent into the Kingdom of *Portugal*, and by the League newly concluded with them, is ſo manifeſt of it ſelf and ſo clearly proved, that it were to have an ill opinion of the ſufficiency and the Judgment of the Readers, and to abuſe their leiſure, to employ time or Reaſons to render it more evident.

But to give our Enemies yet a larger Carreer, and fight with them with leſs advantage; I am content for once to tie my hands, and ſhut my eyes to all our Rights, and grant them by a falſe ſuppoſition (which I reſerve to be deſtroyed in the following Articles)

cles) that their Pretenſions are Juſt, and grounded on ſolid Foundations. I will alſo for this time afford them the libertie of deciding this Queſtion either by publick Right or Municipal Cuſtomes: Though in the ſequel I will make them ſee, that 'tis ſolely the Treatie of Peace which ought to be the Judge of this Proceſs. And after I have granted them (of my own accord, and without prejudice) all thoſe advantages which may ſeem to give them the gain of the Cauſe, my onely aim in this Article is, to demonſtrate That this Invaſion and Rupture is unjuſt, contrarie to the Laws of Nations, and void of all thoſe forms which are neceſſarily required to make a War lawfull; That the Oath which *France* doth exact from the People without diſcuſſing the Cauſe is unjuſt, inconſiſtent with the Divine Laws, with the obligation of their Conſciences, and drawing after it moſt pernicious Conſequences againſt all Princes, to render the Fidelity of their Subjects expoſed to

all Winds; and in concluſion, That the care which they take for their Defence is a preciſe and undiſpenſable Duty, and cannot without Calumnie be termed by the name either of *Rebellion* or *Rupture*.

If we conſider this buſineſs according to publick Right and the Law of Nations, all States-men and Lawyers will agree, that to a juſt War the ſubſequent conditions are neceſſarie; Sovereign Authority, a juſt Title, a preceding Requiſition of that Satisfaction which is pretended, joyned to an obſtinate and invincible Refuſal by the contrarie partie, in ſuch ſort that the Dammage cannot be otherwaies repaired but by Arms, and finally a legal Denunciation of War formally intimated by a ſolemn Decree to the Partie.

Here it might be ſaid, that the moſt Chriſtian King doth not act in this occaſion in the quality of a Sovereign, and ought not to be conſidered but as a particular Pretender in matter of Succeſſion, in regard he grounds all his

his Right upon the Provincial Customes established between private persons by their own consents, without interposition of the Supreme Authority so much as by a Decree of simple Approbation, and which by consequence cannot give him any right to make War. But I reserve this matter to be treated of more fullie in another place.

The just Title is wanting. Though we should suppose that his Right were well grounded, (which notwithstanding is controverted) the contrarie partie is in peaceable Possession, founded upon the common Right of Sovereign Successions, upon a Treatie of Peace, upon an authentick Renunciation, upon a Testament, and upon a continual Custome. In doubtfull cases the favour of the Laws is for the Possessor: It is the part of the Actor to prove and verifie his Right. The Judges themselves cannot pronounce sentence without duely hearing of the parties: *Qui statuit aliquid parte inauditâ alterâ*, &c. It is much more

unjuſt that the parties ſhould doe Juſtice to themſelves without form of Proceſs. If it were permitted to Kings and Potentates to right themſelves inſtantly, and to ſeiſe by force of Arms whatſoever they believe they may have cauſe to pretend to, there would be no Poſſeſſion ſecure in this world. If it be ſufficient to have made a Book be compoſed by an Advocate to juſtifie a Right, and to be able thereafter to proſecute it by force; if no Treaties nor Renunciations nor Preſcriptions are able to ſtop the current of it; there is no more ſecurity in the world for *England*, *Germanie*, *Holland*, *Lorrain*, *Italie*, *Corſica*, and *Caſtile*: all the Preparations are already framed for their Ruine, the Books are already compoſed, the Cauſe is judged in the Tribunal of *France*, the right of War is eſtabliſhed, the Arms are ready, there wants nothing but an Occaſion to take poſſeſſion of their Eſtates by a Right proved by the ſame forms, and adjudged by the ſame Authority which hath deter-

determined their Pretenſions againſt us. *Caſſan*, *Aubery*, *Arroyus*, *Peter du Puy*, and the nameleſs Author of the Treatie of the Intereſts and Maximes of Princes, with an infinitie of other turbulent ſpirits wherewith *France* doth abound, are as competent Arbiters in this point, as the Writer who forged the Rights of the Queen. *France*, by the ſame moderation which it uſes towards us, void of Ambition to extend its Limits, of the deſire of Glorie, of the intention of Rupture, but onely for publick good, *& Officii Religione impulſa*, may drive them out of their Poſſeſſions, to eſtabliſh her own, and yet they ſhould not be able with reaſon to complain of any Injuſtice, if they ſhould ſuffer them freely to introduce this dangerous Prejudication. If the Propoſitions of theſe Scribblers be true, That *all that hath been acquired by the Kings of* France *hath been united to the Crown*; *Arroy*, *fol.* 90. That the Authority of *Charlemagne* which was over *Germanie*, *Italy* and *Spain*, ought to be in

Lewis the Juſt, and conſequently in *Lewis* the XIVth; *Arroy, fol.* 86: If this Right be unalienable by virtue of the *Salique* Law, which they would have paſs for Divine; *idem, fol.* 81: In fine, if the greateſt part of *Germanie* be the Patrimonie of the Kings of *France*; *Auber. lib.* 2. *pag.* 93. Can a juſter Title be required to take poſſeſſion of it? And will he not have much better ground to redemand his own Patrimonie, then he believes to have now to pretend to a foreign Succeſſion?

It is not enough to have a legal Pretext and Sovereign Authority to render a War juſt; there muſt be ſome fault, and an invincible obſtinacie on the other ſide: *Ut ſcilicet illi qui impugnantur propter aliquam culpam impugnationem mereantur*; *D. Thom.* 22. *Quæſt.* 40. *Art.* 1. which he eſtabliſhes upon the Doctrine of S. *Auguſtine* in *lib.* 83. *ſuper Joſue Quæſt.* 10. *Si gens vel civitas plectenda eſt, quæ vel vindicare neglexerit quod à ſuis improbè factum eſt, vel reddere quod per injuriam abla-*

ablatum eſt. Whence it may be inferred, that the Injury muſt needs be very great to deſerve ſo violent a Reparation, and that it muſt be irreparable by any other way, that it may be lawfull to come to the laſt remedy. All War that is not abſolutely neceſſary is againſt the Law of God and Nature, as the ſame S. *Thomas* doth explicate it in the ſame place, and is not permitted but as the laſt means, when all others are found to be ineffectual. *Extrema primo nemo tentavit loco.* To judge from theſe grounds of the Juſtice of this War, we muſt examine by parcells the proceeding which *France* hath held in ſeeking Satisfaction, and it will clearly be ſeen, that ſhe hath carefully ſhunned the true means of obtaining it by lawfull courſes; that ſhe hath provoked us with divers Injuries, as I ſhewed before; that not onely her firſt end and ſole deſign hath been to renew the War, but alſo to ſurprize us by a falſe pretext of Peace and Friendſhip.

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The Conduct which Decency and the Law of Nations ſeemed to preſcribe to them in this occaſion was, to advertiſe the Queen preſently after the death of the late King, by an authentick and legal way, (according to the Cuſtome amongſt Monarchs) as by ſome Envoy, or by their ordinary Embaſſador at the Court of *Spain*, to acquaint her with the ſubject of their Pretenſions, and to ſhew * her the reaſons and inſtructions of them, to require Satisfaction, or elſe to propoſe ways of Agreement: in caſe of refuſal, to declare ſolemnly, that they ſhould be forced to take Arms, if they could obtain nothing by Reaſon and fair means. After all this it became them, according to all manner of Law, to have had recourſe to the immediate Lord of thoſe Fiefs to which they pretended, either for ſubmitting themſelves to his Arbitration, or at leaſt for ſeeking his Interpoſition, and laying open their Rights before him.

* The QUEEN-Regent of *Spain.*

But

But far from all this they began with Leagues, with Aids ſent to the *Portugueſes*, with ſecret Practices amongſt our People, and a thouſand unworthy Intrigues, forerunners and evident diſcoveries of a formed Deſign of War; and in place of all intimation or ſeeking after amicable ways, they have contented themſelves with a ſimple familiar Diſcourſe which paſſed in Converſation between the Queen of *France* and the Marqueſs *de la Fuente.*

Here it is wherein evidently doth appear a proceeding full of Artifice, which cannot tend but to two ends; the one, to have in time and place a fitting occaſion to bring War upon us, and in ſome kinde to juſtifie by that Demand the Violence which they did reſolve to found upon our Refuſal; the other, That they might be able to ſurpriſe us, and make us neglect the care of our Defence and Safetie, and might avoid thoſe Obſtacles which by the good offices of the neighbouring Princes, and intereſſed

eſſed in the Cauſe, they foreſaw would certainly have been employed from all parts to prevent a War, from which they would not be diverted by any manner of Agreement. They feared that if they had obſerved all the Formalities which I have above related, they ſhould have given us an Alarm out of ſeaſon, and have awakened us out of that profound Sleep into which our confidence in their Treaties and words had lulled us: They judged reaſonably enough, that all the neighbour-States would ſufficiently apprehend the Conſequences of this War, to make uſe of all their care and power to terminate this Difference by an Accommodation: They ſaw that an expreſs Declaration of their Deſign might open the eyes of all the World; and that, on the other part, a ſudden Invaſion without any preceding Formalitie would bring an univerſal blame upon them, and convict them of manifeſt Injuſtice: They have choſen this weak middle betwixt

thoſe two extremes, to throw in the aire an empty Propoſition without matter and without form, to the end they might take the advantage of our Anſwer when their buſineſs ſhould ſuffer it; knowing very well, that upon ſuch a weak ground we were not able to make any Reply to their full ſatisfaction: They believed that by this cunning they ſhould have wherewithal to convince us without giving us the Alarm, and wherewith to prove their Moderation without being obliged to deſiſt from their Violences. But God is not ſo cheated, nor men of ſound underſtanding: theſe are Spiders webs, which are good for nothing but to catch flies. Yet of thoſe things do they make the Frontiſpice of their work and the Foundation of their Building: they do move and beſtir themſelves upon them with that life which is ſo natural unto them, imagining that having this Shield, we ſhall not carry in a ſtroak upon them which they ſhall not be able to ward.

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To judge well of the matter, we muſt enter upon the truth of the Fact, which the Author of theſe Libells falſifies in all its circumſtances. The very firſt words of his Preface contain a palpable Untruth; which is, *A little after the deceaſed Queen-Mother had paid to the Memorie of the Catholick King, her Brother, all the Duties and all the Civilities which are uſual in ſuch occaſions, ſhe ſent to call the Marqueſs* de la Fuente, *&c.*

It is certain by the Relation of the Marqueſs *de la Fuente*, and by the date of his Letters written to *Spain*, that the Queen-Mother held this diſcourſe with him on the 13. of *Auguſt*; and all the world knows that the King died not till the 17. of the Month following.

'Tis a thing of bad preſage to the ſucceſs of this Writing, that the firſt words of the Preface ſhould begin with ſo notable a Lie, which gives juſt cauſe to believe that the Concluſion of the ſame Work, which promiſes to our people *a Haven of Bene-*

Benedictions, if they will come under their power, ſhall be of the ſame nature, and that the Epilogue will correſpond to the *Exordium*, by the juſt Conformitie which ſuch a great Oratour, without doubt, ought to have obſerved in all the parts of a Piece which he began to meditate from the very day of the Peace; ſince in effect he is not aſhamed to avow, that they did not conſent to the Act of Renunciation but with a formed deſign to break it.

Thus all that he doth alledgin conſequence of that Commiſſion which the Queen-Mother gave to the Marqueſs *de la Fuente* to write to the Queen of *Spain* on this ſubject, is but a weaving of the ſame Untruth, ſince no body can be ignorant that the Queen had no hand in Buſineſs whilſt the King lived, and that ſhe would by no means have intruded in a matter whereof ſhe had no manner of knowledge, and which was not then within the extent of her Sphere.

That he may not give himſelf the lie,

lie, he continues ſtill to accumulate Lies upon Lies. The Diſcourſe which the Queen-Mother held with the Marqueſs was altogether of another ſtrain then that which he citeth. This wiſe Princeſs, who conſidered the Peace as her own work, and who knew the unquietneſs of the *French* humor, and the deſire of Glory which boiled in the heart of her Son, thought fit to declare confidently her thoughts of it to the Marqueſs *de la Fuente*, that they might ſearch joyntly for ſome means to ſtay his Impetuoſitie. She ingenuouſly repreſented unto him the trouble which the bad Suggeſtions which were infuſed into her Son upon vain pretenſions did occaſion to her, and ſhe intreated him to advertiſe the King her Brother thereof, that he might make ſuch Reflexions thereon as were neceſſary; that ſhe would wiſh, that after he had given ſo much for the Peace, he would yet yield in ſomething to preſerve it, and ſtop the mouths of all ſuch as carried on

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the King her Son to violent Reſolutions; that for her part ſhe would inculcate all the Moderation that ſhe did wiſh in him. Thus did that Royal and prudent Princeſs ſpeak, and witneſſed ſufficiently by her diſcourſe that ſhe had in horrour a Pretenſion which ſhe did not ſuſtain but by the fear of a greater evil. The Marqueſs *de la Fuente* did never charge himſelf with this Commiſſion, (contrary to what this Author doth relate with the ſame fidelitie that he hath done all the reſt) for it is clear by the Relation which he ſent into *Spain* upon this ſubject; and all thoſe who are but a very little verſed in the management of publick affairs will judge that he could not doe it, without he had been ignorant of the Duty of an Embaſſadour; (which cannot be preſumed of a Miniſter of ſo long experience, and who deſerves the general applauſe by his good behaviour in ſo many great Embaſſages.) He knew too well that, being the Catholick King's Miniſter, he might not

act as Solicitor for the moſt Chriſtian King; that he could not enter into a Negotiation upon a matter of this importance without an expreſs Order; that the ſole end of his Embaſſage was, to cauſe the Treatie of Peace to be obſerved in every point, and not to overthrow the Foundations of it; and that the very diſcourſe of the Queen was not ſufficiently authorized, to frame an authentick Propoſition to his Maſter, or to open a Negotiation. He ſatisfied himſelf then by remonſtrating to the Queen-Mother, in the freedome of the ſame familiar diſcourſe, the Reaſons which ought to divert the moſt Chriſtian King from ſuch thoughts, and did beſeech her to employ her endeavours to infuſe into him juſter & more moderate ones. Notwithſtanding, as Embaſſadors are bound to give their Maſters an account even of the ſmalleſt circumſtances of things, he could not omit to inform the Court of *Spain* of all this little Intrigue by way of Relation, and not by way of Propoſition,

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and to intreat them to inſtruct him how he ſhould behave himſelf, in caſe that they ſhould make more legall Inſtances unto him upon this ſubject. The King was yet alive when this Letter came; but falling ſick at the ſame time of the diſeaſe whereof he died, the Confuſion wherein things were then afforded not leiſure to make much reflexion upon a Narration which had nothing of authentick in it: and they were content onely to give him order, that if the Queen-Mother ſhould again debate upon that buſineſs, he ſhould inform her fully touching the Rights of his Majeſtie, and let her know, that the Queen being neither Arbitreſs nor Miſtreſs of thoſe Affairs, ſhe could not of her ſelf diſpoſe of them during her Regencie.

To this Anſwer no new Inſtance was made, no Propoſition, no Complaint. Monſieur *de Bellefond* was ſent to *Madrid* to complement the Queen, without making the leaſt overture unto her touching this Pre-

tenſion. His moſt Chriſtian Majeſtie hath not ceaſed ever ſince that time to confirm unto the Marqueſs *de la Fuente* the aſſurances of a firm reſolution to continue the Peace, without ever ſo much as once naming to him the name of this pretended Devolution. The Archbiſhop of *Ambrun* (as I have already ſaid) hath ever ſince that time acted the part of a buſie man, by propoſing of Leagues and Mediations, and laboured to make thoſe be looked upon as turbulent and ſeditious ſpirits who would have framed the leaſt ſcruple againſt the aſſurances which he gave. And in theſe laſt months paſſed the Marqueſs *de la Fuente* taking leave of the King to return into *Spain*, he poſitively charged him to engage his Faith and Word to the Queen, that he would keep with her and her Kingdoms a conſtant Amitie. Which Promiſe was not reſtricted by any Condition; it was full, free, and univerſal, without any intermixture of Complaints or Pretenſi-

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ons, which might have given occaſion to ſecond thoughts.

After all theſe things the Court of *Spain* had juſt cauſe to believe that the apprehenſions of the Queen-Mother were but panick fears; that an exceſs of her love of Peace gave her vain ſuſpicions of things more remote; or that her Tears, her Reaſons, and the Supplications which ſhe tendered to the King her Son when ſhe gave him her laſt Embraces, had mollified his heart; or that the prudent Anſwer of our Queen had convinced him; or, at the worſt, that he would have the patience to ſtay till our young Monarch were in a condition to underſtand and diſpoſe of his Affairs, that they might agree as Brothers-in-Law, Kindred, and Friends, upon a Difference which could not ſo eaſily nor ſo ſecurely be ended during his Minoritie.

From this ſincere and true Narration all men who are not prepoſſeſſed may eaſily judge, that the diſcourſe which the Queen held with

the Marqueſs *de la Fuente* cannot be taken for a Denunciation, nor ſo much as for a Propoſition, or a Demand, or a ſimple Overture of Negotiation. The reaſons whereof are beyond replie. Firſt, Becauſe ſhe did it not in the name of the King, and did not avow ſo much as that he had any knowledge thereof; and that ſhe had no more any hand in the Regencie, nor in the Adminiſtration of publick Affairs. But ſo it is, that a Denunciation cannot be either legal or authentick, unleſs it doth proceed from a Sovereign Authority. *Grotius lib. 2. de Jure Belli.* Secondly, It was ſpoken meerly by way of diſcourſe, and advertiſement, by an anticipated foreſight of the enſuing dangers, and not as a formal Propoſition duly authorized. Thirdly, That the Caſe was not yet in being, wherein the pretended Devolution could have any effect. Fourthly, That it was not accompanied with any Inſtructions, nor ſpecification of Reaſons, of Titles, and not ſo much as with

with the names of the Provinces to which they pretended; which was abſolutely neceſſary, to the end a Categorical Anſwer might have been given, the Caſe being underſtood. Fifthly, That it was addreſſed to a Miniſter no ways commiſſionated to receive it, nor to enter into the matter of ſo new a buſineſs, ſo ſurpriſing, and of ſo great importance. Sixthly, That the moſt judicious Anſwer of the Queen did not ſtop the courſe of Negotiation, but on the contrary afforded them conveniencie to propoſe their Reaſons, to let her ſee, that by yielding up of thoſe Provinces which were devolved unto them by ſo clear a Right as they would perſwade it to be, ſhe did not alienate any thing of her Son's Eſtate, but performed an act of Juſtice, which would ſhelter his Minoritie from a dangerous War. But they were cautious enough not to enter into the particulars of the buſineſs, they ſhunned all clearings, they would not urge that which they feared they

ſhould obtain; and to make way for their more vaſt Pretenſions by the Right of Arms, it was requiſite to open the paſſage to them by that of the Devolution. Conſequently all thoſe pretty Reaſons which are now alledged to make the Queen's Anſwer be eſteemed an abſolute Refuſal, and an invincible Obſtacle to all Accommodation, behoved to be carefully reſerved, that they might not be preſented to the world but onely by the mouth of Mortar-pieces and Cannons.

Meanwhile it is left to the judgment of the Readers, whether the Queen could have given a more equitable, moderate and prudent Anſwer. Hardly were her firſt Tears dried up which the death of her dear Husband brought ſo abundantly from her eyes, ſcarcely had ſhe taken the moſt ſummaric informations of the Affairs of the Court and Kingdom; when, inſtead of the Aſſiſtance which ſhe ought to have expected from a Prince ſo nearly allied, ſhe ſaw her

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ſelf entertained in place of the firſt Complements by a Propoſition without form, which was not addreſſed unto her, which was introduced by an indirect and unwarranted way, by which they required from her Provinces without naming them, without ſpecifying the Cauſes, or backing them with other Reaſons then thoſe of Buying the Conſervation of a Peace, whereof the purchaſe had been ſold unto us at ſo high a rate. What other Anſwer could ſhe make, but that ſhe was not informed of that Right, that ſhe was but a bare Regent, and had no power to alienate any of her Son's Dominions?

Was it not incumbent to *France* to let her ſee the Grounds of this Pretenſion, and that ſhe ſhould not alienate any thing by reſtoring to every one his own? Do they think that this was a Proceſs which could ſummarily be decided by Bill and Anſwer?. and that upon their ſingle aſſertion denuded of all manner of Evi-

dences

dences ſhe would out of a frolick throw at their faces Eight of the moſt flouriſhing and rich Provinces of the ancient Patrimonie of her Familie? Meanwhile upon this they raiſe the Hue and cry, they take her Reaſons for Refuſalls, they do not reply to them but by Arms, and let her not know what it is they pretend, untill they find themſelves in a poſture able to ſnatch it away by force. It is farther to be obſerved here, that this Anſwer was not addreſſed to the Queen, nor given in form of a Reſolution, but onely in the ſimple terms of an Inſtruction to the Marqueſſe *de la Fuente*, in order to his particular Direction, that he might try by his prudence gently to divert by a Reaſon ſo ſolid the mind of the moſt Chriſtian King from a thought ſo little ſuiting with his own Glory.

For the laſt condition of a juſt War, all Lawyers do require a ſolemn Declaration by a publick Decree legally intimated to the parties. It is an eſſential condition which the

Law

Law of Nations doth preſcribe, and all Wars deſtitute of this Formalitie are Robberies, except the urging neceſſity of repelling force by force ſhall diſpenſe with us therein by the Law of Nature.

It ſeems that *France*, not to forget any thing which might render her Attempt more unjuſt and ſcandalous, would needs omit this Formalitie, to make her acting the more unſeemly, by publiſhing in her Declarations, that ſhe had no deſign to break the Peace, at the ſame time when ſhe did make us feel all the effects of a War. From whence it muſt be concluded, that in regard this Anſwer cannot be interpreted a Refuſal, ſince there was no form in the Demand, and at the moſt cannot paſs but for a ſimple exception of Right, which the Queen did object to defend that of her Son, there cannot be in it any title for a juſt War; ſeeing the Laws do not permit even bare Repriſals, but when the partie required doth ſhut up all the ways by which Juſtice can be

be obtained. *L. Ulp. ff. de cond. indeb.* And ſince they have been anſwered by a juridick Reaſon, it was the part of the moſt Chriſtian King to overturn it by a ſtronger, before he come to extremities.

This Denunciation is not onely neceſſary and requiſite by the Law of Nations, but alſo is expreſly ſtipulated in the XXVI. Article of the Treatie of Peace, wherein it is agreed, *That if any Rupture ſhall afterwards happen betwixt the two Crowns, (which God forbid) there ſhall always ſix months time be given on the one part as well as the other, to retire and tranſport their goods and perſons, &c.* Which of abſolute neceſſity requires a legal and precedent Denunciation, without which they can never be able to know when it ſhall be time to retire themſelves, and ſhall finde themſelves involved in an unforeſeen War.

It is not ſufficient to be indued with Sovereign Authority, that he may have right to make War in all caſes;

ſes; but the action he doth intend to purſue by Arms muſt be of ſuch quality that he may act in it as Sovereign, that is, that he act on the behalf of ſome publick Intereſt which concerns the Sovereigntie; and in this caſe his power is to be regulated by the nature of the Sovereigntie, or of that Right whereby he acts: ſo that if in this action he depends upon the Civil Laws, and be ſubject to a ſuperiour power, what Sovereigntie ſoever he does otherwiſe poſſeſs, he hath not the right of making War, but ought to have recourſe to thoſe Tribunals before which the Cauſe is to be decided, and is not in this reſpect conſidered but as a private perſon. *Grotius lib. 2. cap. 11. de Jure Belli.* Experience confirms this every day. It is for this that the Fiſcal is inſtituted, principally to defend and purſue the particular Actions of Kings by the waies and forms of Juſtice: and this Cuſtome would be unprofitable, if Princes were both Judges and Executors of their own Cauſes. They themſelves

ſelves plead every day againſt their own Subjects, they ſubmit themſelves to the Decrees of their Tribunals; and if they do obſerve this Juſtice toward their Inferiours, they are much more obliged to keep it toward the direct Lord of thoſe Fiefs which they do claim. The reaſon is, becauſe that War is of the Law of Nations, and ſuch like Actions are of the Civil Law; That the Magiſtrates and Tribunals are eſtabliſhed to hinder particular Violences, which otherwiſe would reign in the World, if it were indifferently permitted to ſeek ſatisfaction by Arms: From whence it follows, that when the way of Civil Law is open, and that he who intends the Action is ſubordinate in this particular caſe to a Superiour Authority, he hath not the right of Arms in his power, and cannot of himſelf have recourſe to the Right of Nations, nor act as a Soveraign, in regard he is none in this caſe.

Now in this Action the moſt Chriſtian King (as the Libell it ſelf doth de-

declare) doth act in no other qualitie but as proſecuting the Actions of the Queen his Wife, and conſequently cannot have in that any other Right or qualitie then that which is competent to her ſelf. Therefore in this qualitie either he doth proceed as actual Duke of *Brabant*, and Prince of the other Provinces, which he claims by a real Action, as Lord of thoſe Lands by virtue of a devolved Succeſſion; or onely as having a Right to claim them. In both caſes it is certain that he is not Poſſeſſour, that his Right is not without controverſie, that another is in the peaceable poſſeſſion, founded upon very plauſible Titles, and that if even the moſt Chriſtian King had by violence thruſt him out of his poſſeſſion, the Judges could not pronounce any thing in the principal matter, unleſs the buſineſs were reſtored to its firſt condition. This is a Principle in Law which no Lawyer will call in queſtion.

It is likewiſe moſt certain, that in the qualitie of Duke of *Brabant* he can-

cannot claim his Right by Arms againſt a peaceable and ancient Poſſeſſour, ſeeing he depends upon a Superiour Power, to whoſe Judgement he is bound to ſubmit: That his Action being a Right undecided and in controverſie, he cannot take poſſeſſion without a deciſive Sentence, nor conſequently eſtabliſh fully his Juriſdiction in that Dutchie without doing Homage to the direct Lord, and taking the Inveſtiture from him.

France it ſelf will not deny that the Dutchie of *Brabant*, and the moſt part of the other Provinces which ſhe pretends to, are Fiefs depending upon the Empire, which ſhe her ſelf doth ſeem of her own accord to acknowledge very clearly by theſe words, which ſhe hath inſerted in the end of her Preface; *That his intention is to poſſeſs the Eſtates which are fallen to the Queen in the* Low-Countries, *by the ſame Title by which the Catholick King hath poſſeſſed them in reference to the Empire.* She declares it yet more openly in the ſame Libells,

bells, wherein for a principal foundation of the pretended Devolution of the Sovereigntie of *Brabant*, ſhe alledges the Decree of the Emperour *Henry*, in favour of Prince *Henry*, againſt his Father. Though I ſhall anſwer this Objection in its proper place, for the preſent it's ſufficient I draw this advantage from it, that ſhe doth acknowledge the Emperour for the ſupreme and lawfull Judge of the Differences which may ariſe for the Sovereigntie of *Brabant*, and even in this particular caſe, which they draw by the hair to that of the Devolution; and that the ſaid Emperour *did prohibit the Duke to undertake any thing in it to the prejudice of his Children.* Whereby the Author of this Writing pretends fully to eſtabliſh the Emperour's Right of Judging, pronouncing, and interdicting, which are all effects of a Supreme Authority. And though in that there may be many exceptions and limitations, without farther examining the matter, we will be content in this place to make uſe of their own

Allegations, to fight them with their own Weapons; ſo much the rather, becauſe the Privileges granted to the Dutchies of *Brabant*, *Limbourg*, and the other Provinces of the *Netherlands*, by the Emperour *Charles* the IV, *Sigiſmond*, *Maximilian*, and others, evidently confirm that a part of *Brabant* and of the other Provinces hold of the Empire: beſides, it is ſet down in expreſs terms, that the ſaid Provinces *are Fiefs of the Empire*. No perſon is ignorant that they compoſe one * Circle of it, and conſequently that for what concerns publick Right they are ſubject to the Laws, reſerving nevertheleſs their particular Privileges and Juriſdiction.

* The Empire is divided into Circles.

It is out of controverſie that all the Proceſſes and Differences which ariſe touching Succeſſions, Inveſtitures, Rights, and Pretenſions upon Fiefs of the Empire, depend of the Supreme Juriſdiction of the direct Lord, and that no Prince of this great Body can ſeiſe the Eſtates of another by way of fact, what juſt Pretenſion ſoever he

he may have, without contravening the Order and Imperial Conſtitutions, and obliging all the other Princes to take Arms againſt the Aggreſſour. Experience ſhews us this in an infinitie of Proceſſes of this nature, which are ſtill depending before their lawfull Tribunals. As alſo no body will deny but that the Treaties of *Munſter* and *Oſnabrug* are made uſe of at this day as a Fundamental Law to regulate the Affairs of the Empire: And this is expreſsly declared, *Inſt. Pacis Germano-Gall.* §. *Pro majori*; *Sit hæc Tranſactio perpetua Lex & pragmatica Imperii Sanctio.* And *France* is ſo much the more obliged to conform it ſelf to this Rule, becauſe it hath reaped moſt abundantly the chiefeſt Fruits of this Peace. It is alſo unqueſtionable, that by the ſame Treatie the Circle of *Burgundie* is expreſsly included in theſe words, §. *Ut eò ſincerior*; *Circulus quidem* Burgundicus *ſit manetque Membrum Imperii poſt Controverſias inter* Galliam Hiſpaniámque *ſopitas hâc Pacificatione comprehenſus*: and

by conſequence it ought to enjoy all Rights, Immunities and Prerogatives of the Circles of the Empire ſpecified in the §. *Ut autem*, and in the following, and of the general and reciprocal Warrantie expreſſed in the ſame Inſtrument of Peace. In the §. *Tam univerſ.* are infringed and annulled all attempts and waies of fact formerly committed, or which ſhall be commenced for the future, *quæ nullo præcedente legitimo Juris & Executionis ordine fieri attentarive poterunt.* And in the §. *Ut autem proviſum ſit*, it is provided that, to avoid new Controverſies, all the Princes of the Empire ſhall remain in the peaceable poſſeſſion and enjoyment of their Rights and Prerogatives, *ut à nullo unquam ſub quocunque prætextu de facto turbari poſſint.*

In the §. *Pax verò concluſa*, it is expreſsly ordained againſt all waies of Fact; *Et ſi quid eorum à quocunque violari contigerit, læſus lædentem inprimis à via Facti dehortetur, causâ ipsâ vel amicabili Compoſitioni, vel Juris diſce-*

disceptationi submissâ. And in the §. following, the term of three years is appointed to terminate the Difference either by the one or the other way: And in case that without having recourse to or putting in practice the one or the other of these means, any one before the said term of three years do undertake any thing by the way of Arms; *teneantur omnes & singuli hujus Transactionis consortes, junctis cum parte læsa* (that is to say, he who is attaqued by force) *consiliis viribúsque, Arma sumere ad repellendam Injuriam à passo moniti, quòd nec Amicitiæ nec Juris viæ locum invenerit.* By which it is clear, that it is not permitted to any to take up Arms untill he hath tried for the space of three years the means of Accommodation, or of Justice. The words that follow in the same §. do yet more clearly explain it: *Et nulli omnino Statuum Imperii liceat Jus suum vi vel armis persequi; sed si quid Controversiæ sive jam exortum sit, sive posthac inciderit, unusquisque jure experiatur:*

ſecùs faciens reus ſit fractæ Pacis.

Either then the moſt Chriſtian King will act in this Cauſe in the name of the Queen his Conſort as ſhe is a Princeſs of the Empire, or as a private perſon by virtue of the Municipal Laws of *Brabant*. In the firſt caſe he ought as a Vaſſal to have recourſe to the Sovereign Tribunal where the Controverſies about the Ducal Succeſſion are tried: In the ſecond caſe he ought to ſubmit himſelf to the Judgement of the Feodal Court, which is the onely Interpreter of the Cuſtomes of the Countrie, and the ſupreme Judge of the particular Actions touching Fiefs.

As to the Declaration which they do make in the ſame Writing, that they'l poſſeſs theſe new Conqueſts under the ſame Laws and Dependences on the Empire whereby our Kings have held them; It is a Proteſtation contrary to the Act, and their proceeding doth deſtroy it abſolutely. How can it be hoped that they'l ſubject themſelves to the Laws of the Empire

Empire in the fruition of those Estates, when they do violate them all by the Invading of this Circle? All the Pretensions of the Princes of the Empire one against another have alwaies been left to the Supreme Judicatory; they have ever been begun by some Process: And those who, wearied with their tediousness, have laboured to right themselves, have still found opposition, and been discountenanced by the * General Diet. Even they who have carried Arms against the Empire have never been condemned, nor exposed to the Imperial Outlawrie, but according to the forms of Justice. This course is so regulated and so confirmed by Custom, that amongst so many Differences of which *Germanie* is full, and in the numberless multitude of noble Families which compose this great Body, not so much as one is to be seen which hath strayed from this Highway without punishment. *France* alone, which is yet but upon the Threshold of the Door, will already

* Which is the Imperial Diet.

command within the Houſe, and without any form of Proceſs erects to herſelf a Tribunal of her Throne, Advocates of her Army, and Judges of her own Power. What can the Empire expect from her Submiſſion when ſhe is Miſtreſs, if ſhe make ſuch uſe of it when ſhe is but a Pretender? And how ſhould one promiſe to himſelf the Fealtie of Vaſſalage from thoſe who commit an act of Felony to acquire it, and will not enter but by the oppreſſion of Laws and Juſtice?

From all theſe Principles, which are clearer then the day, this Concluſion may be drawn, That the Oath and the Acknowledgement which they exact from his Catholick Majeſtie's Subjects is a Seditious practice, contrary to the Right of Nations, which ſhocks both their Duty and their Conſciences, and which no body can take without making themſelves guilty of a Crime againſt God, of Rebellion againſt their Prince, and of Baſeneſs as to themſelves; though we ſhould continue ſtill in the ſuppo-

ſuppoſition that the Pretenſion of the moſt Chriſtian King were equitable. I ſhall prove this by five convincing Reaſons.

The firſt is, That they are at preſent tied to the King of *Spain* by a ſolemn Oath with which they cannot diſpenſe of themſelves.

The ſecond is, That this Oath is valid and lawfull, being founded upon the authentick Titles of the perpetual order of the Succeſſion of their Dutchie, upon the Imperial Inveſtiture, upon the Queen's Renunciation, upon the *Pyrenean* Treatie, and upon the Teſtament of the late King.

The third is, That it hath been tendred ſince the Caſe of the pretended Devolution happened, without any Oppoſition made by the moſt Chriſtian King, or Proteſtation to the contrary, which might have put them into the leaſt doubt of the validity of their Oath: And in ſuch like publick Acts which are of conſequence the ordinary Rule is, *Qui tacet, conſentit.*

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The fourth is, Becauſe there is neither previous Judgment nor Sentence to the contrary, which can diſpenſe with them in their natural Obligation.

The fifth is, That what Pretenſion ſoever may be moved againſt a Prince that is in actual poſſeſſion, the Subjects are not Judges in this Cauſe, but are bound to keep their Fidelity to him to whom they have ſworn it, either till he himſelf diſpenſe with them, or that ſome ſuperiour Authority decide the matter: otherwiſe it would be a Levity of moſt pernicious example for all the Subjects of other Princes, if upon the ſimple Aſſertion of the firſt comer they might have liberty to renounce their Faith, and blindly to give themſelves to whoever ſhould challenge them to be his. It would likewiſe be an intolerable Arrogance in Subjects, which would overthrow all the Order of Politie and of humane Society, if they would attribute to themſelves the power of Judging Cauſes of Sovereignties: that

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ſame would not be endured even in private Succeſſions, in which the Subjects ought to remain under the Obedience of their Maſters, ſo long as they are not exempted from it by a ſuperiour Decree. We could, according to this wicked Maxime, by a more ſpecious Right ſolicit the Subjects of the Dutchies of *Burgundy* and *Bretanny*, and alſo, with a farr juſter Title, all thoſe of the Places reſigned by the laſt Peace, which *France* hath ſo frankly and lightly broken, to renounce the Duty which they have promiſed to him who poſſeſſes them. We ſhould be grounded in our Pretenſion to the Dutchie of *Burgundie* on a ſolemn Treatie of Peace, and for that of *Bretanny*, on the Right of a lawfull Succeſſion: And I am certain that if the deciſion of this Proceſs were referred to the people, they would not heſitate to declare in our favour.

'Tis a Queſtion which the Great and Supreme Arbiter of the World, our SAVIOUR, decided in the

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ſame caſe, upon the captious propoſitions of the *Phariſees*: Though the Right of the *Romans*, and particularly *Cæſar*'s, was ſubject to many Exceptions, and that his Poſſeſſion was not by much ſo well founded as ours is, yet he ordained notwithſtanding that the Tribute ſhould be pay'd to the preſent Poſſeſſour; to teach the people, that it did not belong to them to judge of the Right, but to yield Obedience to the party who was in actuall fruition of the Sovereignty, who bore the marks and the Character, and exerciſed the Juriſdiction thereto belonging.

ARTICLE

ARTICLE IV.

That the Renunciation of the French *Queen is juſt, irrevocable, neceſſary, and uſefull to the Publick good, nor contains in it ſelf any cauſe of* Nullity *or Læſion; and that the Queen of* France *hath been duely Doted.*

HAving made known the Injuſtice of the Proceeding; it remains to make evident that of the Pretenſion. I ſhall conform my ſelf upon this Subject to the Method which they have obſerved in their Libells, that I may not loſe ſight of them. Before they do attaque the Strength of the place, they have employed all their force to take the Outworks: and ſeeing that the *Renunciation* of the Queen of *France* was a Barricado which hindred them in their approches unto it, they have employed their

their moſt powerfull Engines to blow it up; without conſidering that by deſtroying that Work, they overthrow the Foundation of a Treatie which hath given them ſuch great Advantages over our Monarchie, and deprive themſelves of all the Rights to thoſe Provinces which by this Peace they had acquired, ſo that they can neither poſſeſs nor retain them henceforwards without manifeſt Injuſtice, unleſs they acknowledge the Principles on which their Poſſeſſion was eſtabliſhed; their own Mine doth fall back upon themſelves. If the Renunciation ſhould be null, the *Pyrenean* Treatie muſt be ſo too; every thing muſt be brought back to it's primitive Integritie: They can no longer make uſe of the Inſtrument of Peace, to ſecure and render their Conqueſts lawfull; they repoſſeſs us again in all our Rights; and all the Fruits which they have gathered from that Tree, of which they endeavour to cut up the Root, are but ſo many goods ill purchaſed.

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Here it muſt be acknowledged that the Flattery of thoſe Writers is very inconſiderate, and that they have applied themſelves more to a petty litigious Intereſt then to the Glory of their Prince; they cannot controvert upon the Queen's Renunciation without calling the ſincere Faith of their King into queſtion. The Marriage was concluded upon the ground of the Renunciation, and the Peace upon that of the Marriage: all theſe things have an inſeparable connexion. His moſt Chriſtian Majeſtie was aſſiſted in this occaſion by the moſt expert and the ableſt Miniſters of his Kingdom, who could not be ignorant whether the Infanta had power to renounce lawfully or not: This Work was premeditated, debated and concerted amongſt the Parties by a long Negotiation, which gave occaſion to all the reflexions upon Law and Policie which the cleareſt Wits could frame in ſo important a matter. If then they diſcovered that Truth which ſince they would

would make paſs for ſo clear and palpable, That this Act of Renunciation could not be valid, either they muſt confeſs that they have been the authors of a ſignal Cheat, by Treating upon this Foundation, approving it, accepting it, and inſerting it into the Treatie of Peace by an expreſs Article, promiſing to cauſe it to be Regiſtred amongſt the Acts of the Parliament of *Paris*, and authorizing it by their Oath; or elſe they muſt accuſe themſelves of Ignorance, in not having underſtood before they concluded the buſineſs thoſe Nullities which at preſent do appear ſo evident unto them. To what condition go they to reduce the Affairs of the World, if the ſolemn Treaties made betwixt ſuch Great Monarchs, for the univerſal Benefit of Chriſtendom, the Repoſe of the People, and the Securitie of the neighbouring States, are found expoſed to mental Reſervations, and all the Subtilties of the Barr? And if ordinary Merchants, onely for the good of their Commerce,

merce, have the liberty to form to themſelves a Right, and particular ſtyle, which ſhelters them from the Intrigues of the Palace; would it be convenient that Sovereign Princes in publick Treaties, which do concern the publick good, ſhould not be exempt from that ſubjection? If this pernicious Maxime be once eſtabliſhed, of reducing the publick Right to the condition of private Right, we ſhall quickly ſee as many Wars ariſe amongſt Princes as there be Suits of Law amongſt Citizens.

To diſcourſe to the bottom upon this matter, we muſt deduce ſome circumſtances of Fact, which are moſt neceſſary to give it a full clearing.

When *France*, rather wearied then ſatiated with War, did reſolve to liſten to the Propoſitions of the Peace, and that their domeſtick Diſorders did oblige them to clear themſelves from foreign buſineſs, that they might reform thoſe Abuſes which undermined them at home, the wiſeſt Stateſmen both of the one and

the other ſide did conceive by a prudent foreſight, that nothing could be ſolidly and durably treated of, if the Root of the Miſchief were not pulled up, and if ſome effectual means were not found out, not onely to ſtifle all the Differences paſt, and prevent thoſe to come, but alſo to extinguiſh, by a real and undiſſolvible Union, the ancient Emulation of the two Crowns, and the natural Antipathy of the two Nations: that all other Dreſſings could never reach the bottom of the Wound, and would prove but Lenitives to mitigate the pain for a time, without taking away the Cauſe of the Evil. Having long ſearched for Expedients anſwerable to the importance of the Deſign, none was thought proper but that of a Marriage between the moſt Chriſtian King and the moſt Serene Infanta *Mary Tereſa*, to joyn the Seal of the Sacrament to that of the Treaties, Love to Concord, and Alliance to Reconciliation.

This is proved by the Inſtrument of Peace, and the Article of Renunciation.

Spain, which deſired the Peace, but yet

yet withall wiſhed to have it firm and inviolable, judged, with reaſon, that this was the onely mean to remedy all thoſe Miſchiefs which the continual Oppoſition of thoſe two great Poles of Chriſtendom had occaſioned for the ſpace of ſo many years: but in this ſhe found an eſſential Difficultie proceeding from the Contrarietie of the Fundamental Laws of the one and the other Realm in two principal Points. Though thoſe of *Spain* do always prefer Males in the Succeſſion, they do notwithſtanding leave the Gate open for Daughters, failing the Heirs Male in the ſame Line. Thoſe of *France*, quite contrary, do perpetually exclude the Females, and to their prejudice make the Right of Succeſſion paſs even to Strangers.

The ſecond is, That one of the moſt ancient Conſtitutions of the Monarchie of *Spain*, on which they lay all the foundation of their Government, is, that their Kingdom is not Alienable, that they live always un-

der their own peculiar Kings, and that their Crown can neither be annexed nor incorporated with any other. That of *France*, on the contrary, doth arrogate unto it ſelf this Right, (as it appears by their Writers and Lawyers) That whatſoever is poſſeſſed or acquired by the Kings of *France* by any kind of Title doth fall to the Crown, is the proper Dominion of it, and can never more be diſmembred from it, and ought to be ſubject to the ſame Laws and form of Government as their own Kingdom, as well in relation to the ſovereign Succeſſion, as to what concerns the publick State. So that in caſe the Monarchie of *Spain* ſhould fall by Marriage or otherwiſe under the power of a King of *France*, ſhe would become a member and an inſeparable Acceſſorie of *France*; ſhe would be reduced to the ſame condition with *Bretannie* and other Provinces, and failing of lawful Succeſſors in her Line, it would paſs to the Collaterals, and to all thoſe who ſhould attain

tain to the Throne of the *Flower-de-luces.*

All *French*-men are ſo unanimous in this Pretenſion, that it would be ſuperfluous to prove it to them; though it would not be hard to impugn it. But 'tis a Maxime received amongſt them, of which they have put themſelves in poſſeſſion by a long abuſe, and which they are reſolved ſtubbornly to maintain in all manner of Rencounters.

This Incompatibility held for a while the Council of *Spain* in ſuſpence; they wiſhed Peace, yet would not buy it at the price of ſo hard a Servitude; and the Directours of ſo many Kingdoms could never have perſwaded themſelves to become Subjects of another Realm, nor to ſee their Ruling Crown reduced to a Province.

The Queen-Mother of *France*, who with the tender feelings both of a Mother and an Aunt paſſionately and with ardour wiſhed ſo fair and ſo fitting an union of two Perſons

which were ſo dear unto her, applied all her cares to remove thoſe Hinderances, and this temperating mean was found out to ſecure the reaſonable Doubts of the Council of *Spain*, That by the Contract of Marriage, the Infanta ſhould abſolutely renounce all kind of Rights which ſhe might ever pretend either upon the whole or the parts of this great Succeſſion, under any Title or Pretext whatſoever which at any time ſhe might have thereunto, to the end that in no caſe the *Spaniſh* Monarchy might either be ſubject or diſmembred.

And both ſides the willinglier conſented to this Expedient, in regard that the way had already been beaten by the example of the Queen-Mother of *France*, and that in effect the Renunciation which ſhe made was of the ſame nature with this preſent one, both in the form and in the ſubſtance, as being founded on the very ſame cauſe of the Incompatibilitie of theſe two Succeſſions. This Marriage, and con-

conſequently this Renunciation, which was the ground-ſtone of it, hath been ſo much celebrated by the *French* Authors, that in the Book of *James de Bie* of *France Metallick* is ſeen ingraven on the backſide of a Medall of Gold *Lewis* the XIIIth holding *Elizabeth* of *Auſtria* by the hand, with this Inſcription, *ÆTERNÆ FOEDERA PACIS.* But the rapid motion of *France* is inconſiſtent with the fixed point of Eternity.

Spain, which preſuppoſed the ſame Sinceritie to be in others which ſhe found in her ſelf, gave ear to this Offer, believing that by this Precaution the Laws of *Spain* might be reconciled with the *Salique* Law, and the Liberty of their People and the Authority of their ancient Government be fully ſecured. *France*, which acknowledged that the thing was juſt, and had been formerly in uſe, put her hands fully to it, becauſe of the great good which would redound unto her by

It is certain by the Act of Renunciation, and by the Contract of Marriage, that an Agreement betwixt the two Kings did precede the ſaid Renunciation.

a Peace which did eſtabliſh her in ſo many Conqueſts. The Inſtrument of it was drawn by common Conſent, and the moſt Chriſtian King obliged himſelf to Ratifie it, and cauſe it to be Enrolled in the Parliament of *Paris*, preſently after the Marriage. And this Agreement was all the Foundation of the Peace, which was immediately thereafter concluded.

Things being thus concerted between the Parties, the King, who had a Paſſion for this Princeſſe which ſurpaſſed all the Reaſons of State, would conclude nothing without her Approbation, and therefore did put into her hands the deciſion of her Fortune: On the one ſide he repreſented to her the Crown of *France*, and the Perſon of the moſt Chriſtian King, with all the Advantages which do render him ſo worthy of eſteem; and on the other ſide a doubtful Succeſſion (which indirectly looked towards her,) to one of the greateſt and moſt powerful Monarchies of the World,

World; Made known to her thoſe irrevocable Laws, which could not ſuffer that theſe two Kingdoms ſhould be united into one, and did not permit that ſhe ſhould retain her hopes and her Rights in the one, if ſhe preferred to it the poſſeſſion of the other; That he left it to her entire diſpoſition, to chuſe of theſe two incompatible things that which ſhe ſhould find moſt agreeable to her *Genius*, and moſt ſuitable to her Fortune.

This Generous Princeſs, who had been educated in an Inclination for *France*, and had a ſufficient eſteem for the Perſon of the moſt Chriſtian King, to prefer it before all the Kingdoms of the World, and who, ſtung with a very noble Ambition not to deſpiſe ſo beautiful a Throne as that of *France*, did not ſtick to embrace the better and the more advantageous Bargain: She freely renounced what could never be hers, but by the death of thoſe whom ſhe loved as much as her ſelf, to accept of a Good

much

much more precious in her eſteem then that which ſhe abandoned; ſhe quitted the doubtful and the future for what was certain and preſent, hopes for realities, and renounced moſt generouſly thoſe Pretenſions which ſhe abhorred, ſince they were but impediments to the accompliſhment of her deſires and to her good fortune. Nor can it be doubted of without doing her injury, but that if it were yet at her election to re-enter again into her Rights by quitting the Good ſhe doth poſſeſs, ſhe would as willingly ratifie this Act to keep and enjoy it, as ſhe did freely ſign to obtain it.

Upon this true Narration, and upon the Act of Renunciation, as alſo upon the XXXIII. Article of the Treatie of Peace, divers Reflexions may be made, and Principles eſtabliſhed, which will overthrow from the foundations all thoſe of the contrary partie.

The firſt is, That this Treatie of Marriage, and this Renunciation, is an

an eſſential member of the Peace; and though they be digeſted into different Inſtruments, they do all notwithſtanding make up but one Treatie, as it is expreſly declared in the ſaid XXXIII. Article, wherein ſpeaking of the Contract of Marriage to which they refer themſelves, theſe words following are added; *Which though it be ſeparated, hath the ſame force and vigour that the preſent Treatie of Peace hath, as being the principal part thereof, and the moſt precious Pawn of its greater ſecurity and laſting.*

Secondly, That as well the ſaid Treatie of Peace as that of the Marriage are Contracts of ſincere Faith, and not of ſtrict Law; and that for the rule and ground of their ſubſiſtence and Interpretation, we muſt reſerre our ſelves to the Cauſes and Ends which both ſides did propoſe to themſelves in Treating, and the Utilitie which ariſes from thence to the publick good.

Thirdly, That theſe are Treaties betwixt two Great Monarchs, who are

It is clearly explained in the Act of Renunciation.

are not ſubject to any particular Laws, nor dependent on the Cuſtoms of Places: That they are fundamental Laws of the one and the other State, which are not to be meaſured but by the Laws of Nations; 'tis a natural Obligation which they contract, which cannot be broken by any Civil Law; it is properly the indiſpenſable Law of Sovereigns, which they can never violate nor alter without Injuſtice, nor correct but by common Conſent. They are above particular Laws, they can change and augment them at their pleaſure, as the Codes *Henry* and *Lewis*: But theſe which tie them to an Equal with a reciprocal knot, and which are the foundation of the publick Tranquillity, can never receive any other form then that which the publick Seal hath imprinted upon them.

1. *Jura naturæ de Reg. Jur.*

The Princes who are abſolute Sovereigns, when they do act as ſuch, have but two ways to terminate their Quarrels, Arms and Treaties. The firſt is but a means to attain to the other:

other: but if the latter have not a ſolid and immovable foundation, and if it be permitted to break it upon the leaſt Subtilities of private Right, there is no more Securitie in the World; and it is to reduce it to its firſt Confuſion, which gave occaſion to the bringing in of Kings and Magiſtrates, to hinder that force might not be the ſole Arbiter of Differences. Now as Princes are eſtabliſhed to remedy this diſorder among their Subjects, ſo are Treaties likewiſe introduced to work the ſame effect among Princes; ſo they are their Judges and their Magiſtrates, to which they ought entirely and abſolutely to ſubmit themſelves, as they pretend that their proper Subjects are ſubmitted to them. *France* admits of no Preſcription to the prejudice of the Royal Domaine, ſhe receives no Judges nor Proceſſes; there is nothing then but publick Treaties which can bound her Pretenſions, which do extend themſelves almoſt over all *Europe*. If ſhe be ſuffered to exclude even this, there will be

be no other means remaining but that of Force, which ſilences all Laws, and Kings ſhall put themſelves abſolutely out of all Commerce.

Fourthly, That this Renunciation is the Soul and the inſeparable Condition of this Treatie of Marriage, without which it had never been either deſigned or concluded, nor conſequently the Treatie of Peace; as is expreſſed in the Article before cited.

Fifthly, That it proceeds not from the bare motion of the deceaſed King, or a particular inclination of his towards the Children of the Second Bed; but out of an inevitable Neceſſity flowing from the *Salique* Law, and the unjuſt Extention which *France* doth make of it to all the States which Fortune hath put into her power: this Neceſſitie, and the other of the Publick good, with the conſervation of this Auguſt Familie, reduced the Infanta to the condition of never being able to be Queen of *France*, but by this Renunciation.

Sixthly,

Sixthly, That there's no conſtraint nor violence on her Father's part, whoſe Sweetneſs and natural Moderation have ſo eminently ſhined throughout the whole courſe of his life, not onely towards his faithful Subjects, but likewiſe towards his Enemies and Rebells, that many conceived it did reach unto exceſs. It is not to be preſumed that the ſame heart which had in it an inexhauſtible treaſure of Bountie toward all the reſt of the World, ſhould have nothing but Rigour and Hardneſs for a Daughter who was the Centre of his choiceſt delights. If there had been any Conſtraint, the effects would have been ſeen by ſome Complaint or Action of the Infanta's; and if her reſpect to her Father did hold them up, her Diſcontent would have appeared in her eyes and in her face: the troubles of the Soul, what care ſoever is taken to hide them, do imprint a character outwardly which betrays the ſecret of the Heart. Never was any ſeen to go to a Wedding with

This is evident by the Act of Renunciation, *fol.* 17.

with more viſible ſigns of ſatisfaction: She ſigned this Act with ſo pleaſant a Reſolution, that it was eaſie to obſerve ſhe much more eſteemed what ſhe was to acquire, then what ſhe loſt thereby; and the Tears which ſhe ſhed at this day for this War, of which, againſt her mind, they do make her the innocent Pretext, witneſs ſufficiently that ſhe diſapproves of the Cauſe of it as much as ſhe deteſts the Effects, and are authentick ratifications of the free Conſent which ſhe gave to this Renunciation. If ſhe had done it unwillingly, ſhe would not have failed to have made Proteſtations againſt it, as ſoon as ever ſhe found her ſelf in a condition to declare without fear and with the applauſe of all *France* the true thoughts of her minde. She her ſelf will confeſs, without doubt, that it was neither Reſpect, nor Obedience, no nor Complacencie, but the free choice of her own Inclination and Prudence: That the King her Father neither employed his Paternal

power,

power, nor Royal Authority, nor Command, nor Threats, nay not ſo much as Perſuaſions, to induce her thereunto; but that he ſatisfied himſelf by propoſing nakedly the ſtate of Buſineſs to her, that he might leave to her ſelf the entire deciſion: That of the two parts ſhe made choice of the moſt advantagious, and the moſt fitting: That ſhe never repented of this Choice, and would to day doe the ſame thing again without any kind of heſitation, if ſhe were in the ſame condition in which ſhe was then. From whence it may be concluded, that this Act having been made without any kind of Fear or Violence, it cannot be called in queſtion by reaſon of any exception of the Civil Laws. *Qui metum non intendit, Promiſſio validè fiet; nec ſcrutabimur quid aut quatenus ejus interſit, quæ Juris Romani ſunt ſubtilitates. Grot. lib. 3. cap. 19. de Jure Belli.*

Seventhly, That there is no Læſion, ſeeing that ſhe acquires a greater Benefit then that which ſhe hath renounced,

nounced, not being able to poſſeſs them both together by an irremediable repugnancie. It was then a kind of Permutation, rather then a Ceſſion, becauſe ſhe gave to obtain, and quitted to get. The Laws give no riſe to an entire Reſtitution, where the condition of the Minor is rendred more advantagious by the Contract, and do permit in this caſe Alienations even of the Goods of Pupills. It is almoſt impracticable in the Contracts of Kings, to prove the Læſion, and determine the legal Portion with its juſt weight, which cannot be verified but by the valuation of the Goods; the inevitable Expences muſt be deducted, and the neceſſary Charges: their affairs are involved into ſo many Intrigues, charged with ſo many Obligations and Coſts, that to conſider it in its rigour there remains very little unto them whereof they can freely diſpoſe; and by the ordinary Rules it is impoſſible to ſet a price upon their Eſtates. It is for this reaſon that they are accuſtomed, by a practice

practice received among Monarchs, to give unto the Daughters a certain ſumme of Money, which ſerves inſtead of a legal Portion, without ever coming to any other rating of Goods, which cannot be juſtly valued. The moſt Chriſtian Kings do practice this towards the Daughters of *France*. He of *England* uſed the ſame way towards the Dutcheſs of *Orleans*; our King towards his: The Princes of *Italie* and *Germanie* have the ſame Cuſtome, without ever ſpeaking of Supplements, legal Portions, or Læſions, which are properly the Actions of private perſons, unworthy the Greatneſs of Monarchs, who never act for Profit, but for Reaſon of State.

Moreover, we muſt conſider (as I have ſaid) this Marriage not as a private Contract, but as a Member of the Treatie of Peace, which neceſſarily relates to all the other Conditions. By the ſaid Treatie, and conſequently in conſideration of the ſaid Marriage, are granted unto the moſt Chriſtian King a great quantity of

Provinces and States, which do ſo notably increaſe his Dominions, much exceeding the value of whatever the Queen of *France* can pretend for her legal Portion: and this Conceſſion doth redound to the advantage and to the Greatneſs of the Queen of *France*, by that inſeparable conjunction which unites all her Husband's Intereſts with hers. Whence it follows, that this Ceſſion ought to ſuffice her in the place of her legal Portion, ſince the Marriage was made in favour of the Peace, and the Peace in conſideration of the Marriage, and that they are two indiviſible things, which could not have being the one without the other, and ſo ſtrongly chained together, that the Conditions of the Marriage are included in the eſſence of the thing, if the Cauſe, the End, the Effects and the whole Context of the Negotiation be conſidered.

'Tis in vain that they alledge that they have acquired them by the right of Arms, and that they were in a condition to drive us to Extremities, and would

would have us esteem it a grace to have spoiled us but of a half: 'tis too much to presume on their good fortune, and to dispose too absolutely of the success of Arms, of which God alone hath reserved the events to his Providence. All the world knows that if the necessity of our Affairs had obliged us to take the resolution of treating with *Portugal*, we could have had means enough to oblige *France* (at the least) to have shared equally the fear and the danger with us. Their People, wearied with the War, and overwhelmed with Taxes, waited onely for a turn of the Tide to take off the Masque: the neighbouring Princes were resolved not to suffer them to enlarge their Conquests any farther. The *Tyrant* of *England*, who made that Kingdom act against its own Interests, in favour of *France*, was already removed by death, and the common voice of the Nation in order to the Reestablishment of the Lawfull Successour, enlightned with so many knowledges,

and endued with ſuch vigour and experience, that it was not to be doubted but that he would ſoon put the Counterpoiſe upon our ſide, by joyning to his Intereſts the reſentment of a multitude of Wrongs: We were powerfully armed in all places, and in thoſe very Summers which preceded the Peace we were in a condition to carry the War home to them. The moſt penetrating among them know the ſecret motives which obliged the Cardinal *Mazarin* to make this Peace, and that the apprehenſion of what was to come more then any Moderation was the firſt mover of it.

But ſetting all their Boaſtings apart, is it not a conſiderable advantage for them to have eſtabliſhed by a Treatie what they had conquered by Arms, to have acquired by a juſt Title that which they could never have retained without Uſurpation, and to have freed themſelves from all the dangers and expences which were inevitable to them in keeping them?

But if it be true, as they do pretend,

tend, that they were in a condition to dispossess our King of his Throne; they must confess two things which are extreamly against them: The one, That the Marriage and Renunciation were the Safety and Deliverance of the Monarchie; and that the King could not onely have made the most illustrious Infanta renounce all her Rights upon this consideration, but that he was bound so to doe by a strict Obligation, since the Goods of private persons belong to the Publick in case of such necessities: that the publick good is greater and more divine then the private: that this last, by obligation of Conscience, is bound alwaies to yield to the other, according to the opinion of all Doctors: and that even the Infanta her self, giving her remote and uncertain Pretensions to the common good of both the Crowns, hath done an heroick Action, whereof *France* would now obscure the Glorie.

Arist. *l.* 1. *cap.* 10.

Salus populi suprema Lex.

The other is, That she hath not onely done good to the Publick, but also

that without betraying her ſelf ſhe could not refuſe to give her conſent to this Renunciation: her Rights and Pretenſions ſhould have been ſwallowed up in the publick Shipwreck; in vain had ſhe reſerved to her ſelf Titles, if the Arms of her Enemies were upon the point to take all from her. So that very farr from a Læſion, ſhe may reckon for a new Purchaſe all that ſhe hath been able to ſave from this Wreck. Her Portion had been very ill aſſigned, in caſe her paternal Goods had fallen into hands which cannot diſmember, alienate, nor reſtore one inch of Land. And in this caſe it is very probable that the moſt Chriſtian King would have deſpiſed the Alliance of a poor exiled Princeſs, who would not have had any other proviſion but her Vertue; and ſhe her ſelf would not have had the heart to caſt her ſelf into the arms of him whom ſhe found loaden with the Spoils of her Father. She hath redreſſed all thoſe inconveniences by this Renunciation, and opened to her

ſelf

ſelf the way to this Crown, to which we now ſee her ſo worthily elevated. What Læſion then can there be pretended, when theſe two Conveniences, *de damno vitando & lucro captando*, do meet ſo perfectly united?

Eighthly, 'Tis an affected ignorance both of Fact & Law, to alledg that the Queen was under age when ſhe paſſed this Act. No body can doubt but that the Princes and Princeſſes of *Spain* are out of Minority before the age of Twenty years, as it is expreſsly declared in the Renunciation; *And as by the grace of God I do find my ſelf to be in the age of Major, and more then twenty years old.* Royal Perſons are held to be out of Minority as ſoon as they have attained to the years of Youth. And though one ſhould conſider the Infanta as a private perſon, and that this were to be regulated by the Laws and Cuſtomes of private Succeſſions; it is a certain truth, that by the Local Cuſtomes upon which *France* doth found her Right, both Sons and Daughters are Majors at

the

the age of twenty years, and may freely diſpoſe of their Fiefs even in relation to their own life, without any Diſpenſation from the King, or authority of a Guardian. And if ſhe were under age, there muſt firſt be ſome enormous Læſion cauſed by the Facilitie of her who renounces, or by the Deceitfulneſs of the other party. But here is neither Læſion, Weakneſs, nor Deceit; and in the end the privilege of Minority ſerves them for nothing, where the Deed is confirmed by Oath. It is certain that if in this age ſhe had attained to the Succeſſion of the Kingdome, or the Provinces which they ſay do belong unto her, ſhe would have had no need either of Tutors or Governours: This Law ſuppoſes, that Nature and Education do ſooner produce in the minds of Princes thoſe fruits of Prudence, which do not grow ripe in others but by time. And if the Civil Laws diſpenſe before the time preſcribed by Municipal Laws, touching the ſubjectings to Minority thoſe who by in-

L. Scio, ff. de in int. reſt.

Auth. Sacramento pauperum, C. Si adverſus vend.

induſtry and aſſiduity have rendred themſelves capable to govern their own and other peoples buſineſs; it is much more juſt that ſuch as the publick Laws admit without limitations and dependences to the Adminiſtration of Kingdomes, may uncontrouled diſpoſe of their own concerns, though the Cuſtome which reſtricts private perſons to the age of Twenty years ſhould not be conſidered. And ſince ſhe was in a condition to enjoy the privilege of Reigning without an Overſeer, 'tis evident that ſhe had no right to enjoy the benefit of Reparation; foraſmuch as the *French* Civilians hold for an indubitable Maxime, that the Daughters which are capable of Marriage are alſo capable of any other kind of legal Deed. *Du Moulin on the Cuſtome of Blois*, *Art.* 161.

Ninthly, It is an inſupportable Injury to the Memory of the late King, to accuſe him to have diſinherited his Daughter the Infanta. On his part there was no poſitive Act, more then a ſimple conſent and authorizing of the

the free Renunciation made by this Princeſs, who by a voluntary choice did preferr the Crown of *France* before that of *Spain*, which ſhe looked upon as very remote. The Teſtament of the King is nothing elſe but a Confirmation of this ſame Deed, which he ſuppoſed to be Legal, being framed upon the platform of thoſe things which were eſtabliſhed by the Peace. And if the Renunciation be juſt, it muſt of neceſſity follow that the Teſtamentarie diſpoſition, which is but a conſequence of it, is ſo likewiſe. All the vain Exclamations which the Authors of theſe Libells do make upon that Subject are but the extravagant digreſſions of an affected Eloquence to aſtoniſh the people. 'Tis the like too of all thoſe majeſtical Conſequences which they draw from thence to exaggerate the Injuries which have been done to his Succeſſours. If the thing be juſt in it ſelf, and received in the perſon of the Mother, it cannot be unjuſt in her Succeſſours, who have no Right but what

what they derive from her. And if it be permitted to private perſons to make Entails to the excluſion of Daughters and their offspring, in favour of collateral Lines; if the *Salique* Law may perpetually deprive them and all their Deſcendants of an Hereditary Kingdome; what Injuſtice can be found in this, that *Spain* hath deſired this Renunciation, to the end they fall not into the Dependencie upon a ſtranger-Kingdome? The Daulphin of *France* had never been in the world, nor had any ſhare in the Crown of *France*, if the Queen had not renounced: and if he cannot be at one time King both of *France* and *Spain*, he muſt lay the fault on the *Salique* Law, which devours all that it poſſeſſes, and obliges all other Kingdomes to provide for their own ſafety by fitting Precautions, and by the natural Law, *quod quiſque Juris.*

The ſource which they leave for the Queen to re-enter into her Rights, in caſe that God ſhould afflict her with

with a Widowhood without Children, is an effect of the Fatherly Tenderneſs and Juſtice, which would needs eſtabliſh her Happineſs in all caſes, by putting her in a condition either to reign glorioufly in *France* by her Fruitfulneſs, or to have wherewithall to comfort her in caſe of Barrenneſs, by re-entring into her Rights to the Monarchy of *Spain*. This doth clearly ſhew that in this Renunciation her Perſon was not regarded, but onely the Obſtacle inconſiſtent with the Reaſon of State, which did ſuſpend the effects of that Love which they had for her; and that renders the Renunciation the more valid, becauſe it is not abſolute, and leaveth the Gate ſtill open for her Re-entry as often as the eſſential Impediment ſhall not come in the way; far from wiſhing her Barrenneſs, or excluſion of her Offspring, whenever they may be received without ſubjecting the King-

Inſtrument of Renunciation, *fol.* 13.

dome. The way is opened to place her and her Succeſſours upon the Throne of *Spain*; *If for publick Conveni-*

veniencies and juſt Conſiderations ſhe ſhould marry with the conſent of the Catholick King, and the Prince of Spain *her Brother.* Whereby it is manifeſt, that the fundamental and ſole cauſe of this Renunciation is, to exclude *France* from the right of being able to annex the Monarchy of *Spain* to his Realm and Laws, and not to deprive the Queen or her Iſſue of it, when no other thing ſhall hinder them from being admitted. Meanwhile upon this the *French* do make a great noiſe, they convert the Honey of this Deed into Poiſon, and make an Injury of a Benefit; and teſtifie thereby that it is not the love of the Queen, but their own Covetouſneſs to devour all, under colour of her Rights, which doth throw them into this inordinate paſſion.

Upon theſe indubitable Principles it will not be difficult to eſtabliſh and ground in Law the validity of the Queen's Renunciation upon the following Rules.

1. It

1. It is lawfull for Princes to reſign and renounce their Hereditary Kingdom in favour of the next Heir. The example of *Charles* the Vth, *Philip* the II^d^, and the Queen *Chriſtina*, doth evidently prove it. And even in Elective Kingdomes, where it ſeems that the Obligation to reign is more indiſpenſable and leſs capable of being retracted then in thoſe which be Hereditary, becauſe it is eſtabliſhed by a reciprocal Covenant, and by an Obligation which ſuch Kings have willingly impoſed upon themſelves, we have ſeen *Henry* the III^d^ renounce openly by his flight. And if the *French* themſelves could conſtrain *Childeric* the III^d^ and ſome other of their Kings to throw themſelves into Monaſteries, and make them renounce their hereditarie Crowns even in favour of Strangers; why ſhall it not be permitted to Princes to deveſt themſelves thereof willingly, to obtain a greater benefit, or for the ſimple deſire of Quietneſs? *John* King of *Armenia* quitted the Kingdome

Gen. 3.

dome to his Nephew *Leon*, to enter into the Order of Saint *Francis*. A great many Princes and Princeſſes, lawful Heirs of Hereditary Kingdoms, have validly renounced them, either for the Publick good, or their private Tranquillity, to embrace Religious or retired life; as Saint *Bridget* in *Sweden*, and others in *Hungarie*, *Germanie*, and *Spain*. *France* alſo furniſhes us with examples of this kind: *Carloman*, the eldeſt Son of *Charles Martel*, parted with his Kingdom to his Brother *Pepin*, that he might wholly dedicate himſelf to the Service of God. What thoſe Princes have been able to doe, either out of Devotion, or the love of Liberty, the Infanta might doe with a juſter title for the good of the Peace of two Monarchies. The Fundamental Law which called her to the Succeſſion was in her favour; and not for conſtraining her: It is a Right that is given them, but not a neceſſitie impoſed upon them: 'tis not a forbidding Law, which we cannot renounce. The *Clem.* 5. *Greg.* 11.

King her Father could not without the consent of the States exclude her against her will, or make her uncapable of the Succession; but she might voluntarily renounce, for her greater good, and for that of the State it self, and that too with the general applause of the people over whom she might have been Queen.

2. Though the ancient Laws were in some kind against the Renunciation of future Successions, the practice of them is now abolished for this respect, and the contrary so well established over all the World, that the *French* Laws do unanimously agree unto it, and even that *He who hath renounced some future Succession, cannot recall by the happening of Children what he hath quitted*; *Epeisses Tom.* 1. *pag.* 407. The Constitution of Pope *Boniface*, which the Author of these Libells cites on this Subject, determines it clearly; the practice of it is commonly received in *Spain*, in *Brabant*, and in all the King's Dominions; and since he himself doth not disagree with

Con. ad cap. Quamvis, p. 3. Const. Bon.

with it, I think it would be superfluous to seek any greater proofs.

3. That the Right of Devolution according to the Custome of *Brabant* being neither Succession nor Proprietie, nor a real assured Estate, but casual and in suspence, it may be validly renounced; and that the use of it is common throughout the whole Dutchy. These three conditions of the Right of Devolution are clearly proved in that learned and solid Treatise which the Counsellor *Stockmans* hath lately published on this Subject, and all the Authors of the Country who have written upon it do unanimously agree with him therein. Wamesius, Kintschot, Christin. Mean.

As to the first Point, that the Devolution is not a Succession, it is easily proved by the Customs of the Places where this Right is in force, and by the Effects both of the one and the other, which are totally different. Succession supposes Death, and Devolution doth begin from the moment of the Dissolution of the first Marriage. There can be no *L. qui superstitis, ff. de acquir. hæred.*

Succeſſion to a living perſon, that were to bury the Fathers before their deceaſe, and make Children ſucceed one another in the Father's life-time, to change a Succeſſion which is direct in its own nature into a collateral one: The Grandchildren (whoſe Father died before their Grandfather) would be wholly excluded from the Inheritance; for they cannot enter by way of direct Succeſſion, becauſe it would be fallen to their Uncles or to their Aunts; nor by collateral, becauſe they would be of an inferiour degree, and that the Feodal Cuſtom of *Brabant* doth not admit of Repreſentation in indirect Succeſſions: ſo that if it were a true Succeſſion, it might happen that an Aunt would totally exclude the Son of her elder Brother, which would overthrow the whole order of the Succeſſion, and the firſt Inſtitution of the Fiefs of *Brabant*, where the Males of the Firſt Bed and their Deſcendents are always preferred to the Females. It is to no purpoſe that the Authors of

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theſe Libells will make uſe upon this ſubject of ſome ill-conceived terms, and improperly applied in ſome one of the Feodal Cuſtoms, by which it ſeems that they give the name of *Succeſſion* to Devolution: for the ſame Feodal Cuſtoms of *Brabant* which he cites were never decreed nor approved, and thoſe which we find in print are for the moſt part but the Projects of the Lieutenant of the Fiefs of *Brabant*, and of ſome Practitioners who have not reflected upon the force of the words, but having been preſented to the Governour to be examined and decreed, the Approbation of them was refuſed, in regard they were conceived in terms not very proper. But however it be, when the Law and Cuſtome is contrary, and that the intention of the Law or of the Cuſtome is manifeſtly known, 'tis a ridiculous thing to prefer the words before the ſubſtance, ſo much the more, becauſe the ſame Cuſtoms do explicate very clearly the Equivocation in other

places. In the XXV. Article it is ſaid, that *If the Fiefs come from the firſt deceaſed, the Proprietie ſucceeds to the Children:* which evidently expreſſeth by this diſtinction, that they do not ſucceed in the Proprietie of the Goods of the Survivor; and that the one is Succeſſion, and the other Devolution. In the XXXVII. Article alſo it is ſaid, that Feodal Succeſſors do not aſcend, but muſt always deſcend: ſo that were the Devolution a Succeſſion, it would paſs immediately unto the Children of the Second Bed, in caſe thoſe of the Firſt die without Iſſue: whereas 'tis certain by the XXIII. Article, that they do return back to the Fathers, or rather that they remain free and relieved of the band by which they were tied, which is rather a Settling, then a Return of the Proprietie. Otherwiſe a great abſurditie muſt follow, which is, That the father would ſucceed as repreſenting his Son, and ſo would be obliged to renew his Inveſtiture, and ſwear Homage anew; which

which hath never been practiſed. Although that the enacted Cuſtomes of *Lovain* ſpeak very uncorrectedly, and ſeem in ſome places to confound the Devolution and the Succeſſion; nevertheleſs it may be ſeen by the coherence, that they ought to be underſtood with different relations, and that the word *Succeſſion* ought to be applied to an Eſtate already fallen by the death of one of the Parents, and that of *Devolution* as relative to the Goods of the Survivors; ſince the Cuſtome in this place treats of the one and the other, and in others it calls the Father the *Proprietarie of the Uſe or fruits*, and that they treat diſtinctly and in ſeveral Articles both of the *Succeſſion* and *Devolution*, as matters of a different nature in their Cauſe and in all their Effects. This Queſtion is ſo plainly handled in the Treatiſe of the Sieur *Stockmans*, chap. 5. *de Jure Devol.* that the Reader therein will finde wherewith to ſatisfie himſelf fully touching this particular, if he hath the curioſitie to run it over.

As for that which concerns the Proprietie, the Children of the Firſt Bed do not poſſeſs any effect thereof whilſt either of the eſpouſed are living, as having neither the uſe of the fruit, nor the teſtamentarie diſpoſition, nor the right of Alienation or of Engagement, nor any other of thoſe Actions which by Law do belong to the Proprietor: and if they chance to die before their Father, they fall from it totally. So that all their Right conſiſts in a ſimple aſſurance that thoſe Goods ſhall not be alienated, and in a hope to ſucceed one day thereunto, in caſe they do out-live their Father. If they were Proprietors, they would be obliged by the ſame Cuſtome Article LII. to take the Inveſtiture from the direct Lord during the life of their Father; which hath never been practiſed. The Father on the contrary hath all the effects of the Proprietie, with this limitation onely, that he cannot alienate to the prejudice of the Children of the Firſt Bed: that

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excepted, he enjoys, he poſſeſſes, he governs, he acts juridically in his proper name; he is not bound to make any Inventory, nor liable to give an Accompt, and hath all the real Actions, which of right cannot belong to a ſimple Uſufructuarie, and are neceſſarily annexed to the Propriety. He is not ſo bridled, but that the Alienations which he makes are valid in themſelves and ſubſiſting, if the Children come to die before him; though they be ſubject to Reſciſſion, if they ſurvive him. In a word, the Proprietie by this Devolution cannot be attributed to the Children by any of the Titles of Law by which Domains are acquired: they cannot pretend to it by way of Succeſſion, as I have already ſhewn; the Devolution gives them not any effect, nor any Title; and the Father hath not loſt it by any of the ways of Alienation which the Civil Laws have preſcribed; the Death of his Wife cannot take from him the Domain of his Goods, which cannot be loſt

L. nemo, ff. de Reg. Jur.

loſt but by a voluntary act, as of Donation, Sale, Ceſſion, or Crime. Whence it ought to be concluded, that the name of Proprietie, without abuſing the word, cannot be given to that which hath neither the effects nor the cauſe thereof; and the Cuſtome cannot, without injuſtice, denude a Father abſolutely of the Propriety of his Goods before his Death, without his own Conſent. All theſe Truths are confirmed by ſolemn Decrees, and by the unanimous Opinion of all the Doctours of the Country, as well modern as ancient, who have treated of this Subject.

By all that I have ſaid it is eaſie to infer, that by renouncing the Devolution we do not denude our ſelves of our proper Goods, we do not part with a Succeſſion already acquired by us, but deprive our ſelves onely of a hope, whereof the event is no leſs uncertain then the hour of our death; which is properly to renounce onely a future and doubtful Succeſſion, which is permitted by the Laws, and is in

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uſe in relation even to thoſe Goods devolved in all places where the Right of Devolution is received.

If the Queen of *France* might lawfully renounce, I do maintain that ſhe was bound to doe it by a ſtrict Obligation, for the good of the two Kingdoms, for her own good, and by a principle of Thankfulneſs for the Kindneſs of the King her Father.

She her ſelf profeſſes in ſeveral places of the Deed of Renunciation, that the Motives which induced her to doe it are, *the Acknowledgment of the numberleſs Benefits which ſhe had received from the King her Father, the good and conſervation of his Auguſt Familie, and the love of the Safety and Quietneſs of the State.* And I perſwade my ſelf that ſhe ſuffered a great deal leſs Dammage and Grief by denuding her ſelf of this Right, then ſhe undergoes now by the Avidity of thoſe who would re-eſtabliſh her in it againſt her will. In effect, ſhe ſees her ſelf reduced to the neceſſity of de-

deploring the Misfortunes of a Brother, or of a Husband; to ſee her Family overthrown, or her Throne deſtroyed: and that to which of the two ſides ſoever Victory doth lean, it cannot be but fatal to her Glorie, or to her Affection.

Againſt the evidence of theſe Verities the Scribbler forms divers Objections, which are all founded upon falſe Suppoſitions in matter of Fact and Right. He cites one onely Article of the Treatie of Marriage, and draws out of it one Member to make up the whole Body of his Diſcourſe, without citing any thing of the Act of Renunciation. The two Reaſons which he preſſes moſt are theſe: *That it is of the eſſence of a Renunciation, that a Daughter ſhould be endowed; that the Law in* Spain *is expreſs for it; and that if the Father gives leſs to his Daughter then her Legal Part, the Renunciation is null; and that it is requiſite that her Endowment ſhould be conſtituted out of the Father's Eſtate.*

Upon

Upon which he makes two Arguments. The one is, That the Infanta hath not been endowed, becauſe the King owed to his Daughter eleven hundred thouſand Crowns of Gold of the Goods belonging to her Mother, and hath promiſed her but five hundred thouſand for her Portion, obliging her to renounce that which he was indebted to her.

The ſecond is, That theſe five hundred thouſand Crowns of Gold were not paid within the Term prefixed; That a Portion promiſed and not pay'd is not a Portion. From whence he will inferr, that by this deficiencie the Renunciation is annulled.

Theſe two Propoſitions, which he endeavours to prove by a rabble of unuſeful Allegations, are not comprehended within the Fact, of which he doth craftily omit the principal Circumſtances, and touches not the eſſential point of the Queſtion: ſo that if we ſhould agree with him in his Principles, yet he could not draw from

from thence any Concluſion to our diſadvantage.

In the firſt place he abuſes very improperly the terms, and the ſubſtance of the Laws, when he ſtrains himſelf to prove that the Portion promiſed and not pay'd is not a Portion; which ſhocks all the doctrine of the Law, it being indubitable that it is truly a Portion as ſoon as it is promiſed, for it induceth a real Obligation upon him who did make it: *Et qui habet Actionem ad Rem, Rem ipſam habere dicitur*, when the Debtor is ſufficient. This Queſtion is to be found very clearly decided in *Tiraquel*, and the Texts of the Law and Authors which he cites, in his Treatiſe of *Retract. Convent.* 8. 7. *ad fin. tit. Gloſs.* 2. *num.* 32. *& ſeqq.*

In the ſecond place he miſtakes himſelf, by intending to make this Renunciation paſs for a private Deed, which ought to be regulated by the Civil Laws. I have ſhewn before that it is a publick Deed, an eſſential Member of the Peace, and an Ob-

Obligation which hath for its Cauſe the Fundamental Laws of the State,& for its End theConſervation of it: and I affirm farther, that it is a Law and a Pragmatick Sanction, eſtabliſhed by common Conſent between the two Crowns, and by the general deſire and wiſhes of the People, expreſly derogating from all particular Laws, as it is evidently ſet down in the Deed of Renunciation; ſpeaking of the Agreement made betwixt the two Kings for the Treatie of Marriage, it expreſſeth it ſelf in theſe words: *And that in the V. and VI. Articles of the ſaid Treatie it is reſolved and ſettled by common Conſent, (that is to ſay, of the two Kings,) and by the ſame will, and as a thing moſt convenient, after having attentively conſidered it, &c. that I, and the Children which God ſhall give us of this Marriage, ſhall remain unable and incapable, and abſolutely excluded from the Rights and hope to ſucceed to any of the Kingdoms, Eſtates and Seigniories, &c.* And a little lower it proceeds; *Condeſcending*

ing to this with the common deſire and wiſh of their Subjects, Vaſſals, and natural Lieges, who will that it have the force and vigour of a Law and pragmatick Sanction, and that it be received and obſerved as ſuch. And ſome few lines after in the following §. it is added; *It ſhall be agreed by Covenant, that their Majeſties will that it have the ſtrength and vigour of a Law eſtabliſht in favour of their Realms, and of the publick Intereſt of them, &c.*

Three lines above this he doth ſpecifie the Cauſes: *Regard being had to that which imports to the publick State, and their Preſervation,* (he ſpeaks of the two Crowns) *that being ſo great they come not to be joyned together, and that the occaſions be prevented that may afterwards happen of joyning them together, &c.* He expreſſes himſelf yet more clearly two pages below: *Having joyntly regard to the Publick and Commons of the Realms of which God hath given him charge, the which and thoſe of the Crown of* France

France *are equally concerned that the Grandeur and Majeſtie which they have ſuſtained and preſerved for ſo many years, with ſuch good fortune and glorie to the name of their Kings Catholick and moſt Chriſtian, may not be diminiſhed nor decreaſe, as neceſſarily it would diminiſh and decreaſe, if by the means and by reaſon of this Marriage they ſhould come to be joyned and united in ſome of the Children or Deſcendents, the event whereof would occaſion to the Subjects and Vaſſals the Diſcontents and Afflictions which may be conſidered:* and ſubſequently makes report of divers publick utilities which ariſe from this Agreement, and places it as the eſſential Foundation of the Peace and of its continuance. *And to facilitate for the future the Alliances betwixt the two Crowns*; which otherwiſe the pretended *Salique* Law would render alwaies dangerous and not to be practiſed, unleſs they had agreed amongſt themſelves upon this Remedie, whereupon there are many things to be conſidered.

1. That it is an Agreement made betwixt the two Kings, for the good of their Eſtates; that this Renunciation is relative to the V. and VI. Articles of the Treatie of Marriage which was concluded with the moſt Chriſtian King, wherein he intervened as the principal partie, as is certain by the Narrative at the beginning of the ſaid Deed. It appears alſo by the Obligation which he impoſes upon himſelf to ratifie it: becauſe if he had not acted in this Renunciation but in the quality of a Husband, and not of a partie promiſing and accepting in his own name, he could not nor ought not to have ratified it, but onely to have authorized it; though he hath ratified it, as the Authour himſelf doth acknowledge, and that the Ratification of the Treatie of Peace did neceſſarily include all that to which it was relative. Now it is uncontroverted that the two Kings by common conſent, at the deſire of their People, had power to derogate from Laws of private con-

concernment, in regard they made them, and have the right of repealing them; that the Kings of *Spain* and *France*, for cauſes of leſs importance, do not onely derogate, but change every day their Conſtitutions and Laws: and therefore that which they doe for the private reſpects of civil Juſtice, they have much more power to doe for the common good of the State: otherwiſe if they ſhould not have the power to derogate from Laws, to extinguiſh Actions, and ſtop the Proceedings of civil Juſtice by publick Treaties, they could grant no Amneſties, nor hinder the Right of the Fiſcall in the puniſhment of Crimes, nor of private perſons for the Reſtitution of what they have taken the one partie from the other, nor impoſe ſilence to parties contending, nor reſtore the Goods given upon juſt Confiſcations, nor other things of the like nature, which fall out in all Pacifications, and which make it appear that the neceſſity and the utility of the Publick good may derogate

from Laws when it pleaſeth the Sovereign. As it is certain that they have had the power, it is alſo clear by the ſame Inſtrument that it was their will, and that ſuch hath been their intention. *Without having regard to the ſaid Laws, Cuſtoms, Ordinances and Diſpoſitions, by virtue whereof they have ſucceeded and do ſucceed to all the aforementioned Kingdomes, &c.* And thereafter; *To which and every one of them their ſaid Majeſties ought to derogate in ſo farr as they ſhall be contrary, &c.* And more below; *And that it is underſtood by the Approbation of this Treatie, they do derogate and hold them to be derogated.* And in the V. Article it is ſaid; *With Derogations and Abrogations of all and whatſoever Laws, Uſages and Cuſtoms, &c. from which their Catholick and moſt Chriſtian Majeſties ought to derogate, and ſhall be underſtood from this preſent to remain derogated from, &c.* But that which is yet of more efficacie and more conſiderable is, that in the Ratification of the Treatie of Peace

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on the part of the moſt Chriſtian King this very Derogation is expreſsly contained; *Derogating to this end as we do derogate from all Laws, Cuſtoms and Diſpoſitions to the contrary.*

2. It is certain by the Authour of the Dialogues own confeſſion, that the moſt Chriſtian King hath ratified this Agreement: 'tis in page 30. *As to the Ratification of the moſt Chriſtian King, it might be of ſome conſequence, if there were not other Nullities in the Queen's Renunciation then the defect of the Authorization of the King her Husband.* Here he doth avow the Ratification, though in the ſame paſſage he will needs make it paſs for a ſimple Authorization: but it is perſpicuouſly ſeen by all the Clauſes of this Inſtrument, that it is an Agreement in which the moſt Chriſtian King enters as the principal partie, & that the Renunciation of the Infanta hath its beginning and ſource from this Agreement, to which ſhe did willingly conſent: ſo that he muſt of neceſſity acknowledge either that the Kings of

France have not the power to exempt themſelves and free themſelves from the Civil Laws in publick Treaties, nor to hinder the effects of them in what concerns themſelves, (which is directly againſt the uniform opinion of their Doctors, and offends even common ſenſe;) or that he grant that the moſt Chriſtian King, nor the Queen his Conſort, cannot make uſe to their own advantage of thoſe Actions which Law might give them, after they have derogated from them by a ſolemn Treatie. Otherwiſe men muſt renounce the faith of Treaties, and no Peace ſhall ever be ſecure, if in it the Actions competent to Parties can by no means be extinguiſhed, and if ſtill a gate be left open to the Exceptions in Law.

3. That theſe Writers do ſuppoſe a falſe Principle, that the Renunciation was made onely in contemplation of the Portion: the Clauſes above cited do evidently ſhew that they are miſtaken. Things muſt be looked upon in another light to judge ſoundly

ſoundly of them. The Right of Succeſſion was an eſſential Obſtacle to the Marriage, which is certain throughout the Text of the Renunciation: The Marriage was a neceſſary means to the Peace; I have already proved it by the ſame Inſtrument of Peace: The onely remedy againſt all Pretenſions was the Renunciation: to conclude the Marriage, the Obſtacle was to be removed. Let us acknowledge then that the Renunciation ought to hold the firſt place, as the Diſpoſitions ought to precede the Form; that it is independent of the Portion, as having different Cauſes and Ends; that it ought to have been ſtipulated before the Marriage was ever ſpoken of or the Portion. The whole Text of this Inſtrument ſhews that the Portion is in favour of the Marriage, and the Renunciation doth regard the good of the two Monarchies; the one being founded upon the love and natural obligation of Fathers, and the other upon publick benefit: The one is a pragmatick San-

ction, and the other not. *It is agreed that the King my Lord (becauſe and in reſpect of this Marriage, and to the end that I might carrie to it my Portion and proper Goods) hath promiſed that he will give me five hundred thouſand Crowns.* It ſaith not that becauſe and by virtue of the Renunciation five hundred thouſand Crowns ſhall be given, but in regard of the Marriage, which ſuppoſes that the Impediment of State ſhould be removed by the Renunciation: and thus the Cauſe of the aſſignation of the Portion is the Marriage; the End, that ſhe may carry her Portion to it. But the Cauſe and the End of the Renunciation is, *For the publick good of the Kingdoms, the conſervation of the Greatneſs and the Glory of their Majeſties; to avoid the Diſcontents of the People, and the Dammages which might ariſe from thence; and to facilitate thenceforwards the Marriages between the Children and the Deſcendents of the two Kings*; and, laſtly, to avoid the Hinderance which Reaſon of State brought to this Mar-

Marriage, and conſequently to the Peace. All theſe Cauſes are in their own nature irremoveable, unalterable, and of abſolute neceſſity, nor can be tied to a private Deed, as is the payment of the Portion, nor limited by any reſtrictive Conditions: and on the contrary the obligation for payment of the Portion may depend as to its execution upon many Conditions, and the effect thereof may be ſuſpended for juſt cauſes. In the Renunciation the Infanta hath obliged her ſelf to the whole State; in the Aſſignation of the Dowrie the King hath obliged himſelf to the moſt Chriſtian King, as the future Spouſe of his Daughter. The delay in the payment of the Portion is a prejudice in a pecuniarie matter, which may eaſilie be repaired by paying the Intereſt which the Civil Law doth appoint after the term of payment is paſt; to ſhew that deficiencie in the payment doth not annull the Contract, ſince the Law hath provided for it by another remedie. But the defect of the

the Renunciation would bring along with it a dammage which could never be compenſed nor repaired; whereby it may be judged, that it hath not nor could not be the intention of the Parties to tie the Renunciation to the payment of the Portion, and make ſo neceſſary a thing depend upon one ſo caſual, that it may be retarded by a thouſand accidents. The Renunciation alſo is conceived in terms of doing preſently, and the payment of the Portion in theſe of doing hereafter. *And from this preſent time I do hold my ſelf content and entirely paid all that belongs or may belong unto me.* And as to the payment of the Portion, it is ſaid; *And this Summe ſhall be paid in the manner following, &c.*

It cannot likewiſe be conceived how this Scribbler dares to publiſh, that *the* Spaniards *did make the Infanta ratifie it poſteriourly to her Marriage, by ſome ſecret Acts which* France *hath never ſeen*; ſeeing he himſelf doth acknowledge that the moſt Chriſtian

ſtian King did ratifie it, and that it is expreſsly ſet down in the VI. Article of the Contract of Marriage, that the Queen ſhould paſs an Act of Renunciation *before ſhe ſhall marry in words importing the preſent time, and afterwards ſhall approve and ratifie it joyntly with the moſt Chriſtian King, as ſoon as ſhe ſhall have celebrated her Marriage.* And though *France* had never ſeen thoſe Articles, ſhe cannot pretend any cauſe of ignorance of any of the Clauſes contained therein, ſeeing that by the ſame Article of the Treatie the moſt Chriſtian King doth conſent that this Renunciation ſhould be made *in the moſt effectual and fitting form which could be for their validity and firmneſs, with the Clauſes, Derogations and Abrogations, &c.* To which in the ſame Article he conſented, and hath approved them as if they had been already made: *They are held already made now for then by virtue of this Treatie.*

But the Subtiltie of this Writer, who ſeeks by all means to faſten him-

ſelf

ſelf upon ſuch ſmooth ice, leaves all the Subſtance of the Caſe behind, to take hold of one word of the ſame Article, which is, *providing the payment, &c.* and would inferr, that this Renunciation is abſolutely relative, not onely to the payment of the money, but alſo to the terms of the payment deſigned in the Second Article; which cannot ſubſiſt without altering the whole nature of the Treatie, and giving a violent interpretation, and oppoſite to the ſenſe and to the conception of this Article, and of the Renunciation: becauſe it is not ſaid in this place, that in caſe of payment ſhe ſhall renounce, but that *ſhe ſhall be content with the ſaid Portion*; which declares no other thing, but that when her Portion ſhall be pay'd, ſhe ſhall be content therewith, it being certain that ſhe could not be ſatiſfied in this reſpect before ſhe ſhould be pay'd. So that the defect of payment within the terms mentioned gives her a juſt right to pretend to it with the Intereſts, which run from the time limi-

limited by the Laws, (if some just cause do not hinder) which regularly would not be due without an express Promise, unless that it were in favour of the Portion, and cannot be extended farther. And albeit there should be in that some obscurity of terms, it is certain that in the Interpretation of such Treaties which are of upright Faith the Intention of the Parties is onely to be respected: so that the Scruples which may arise from the Ambiguity of the words may not prejudge the principal end. *L. 1. de Legatis.* And it is the more manifest in this case, because the Renunciation ought to be made in present and positive terms before the terms of payment should have been run out. Wherefore to put the Queen in the right of re-entring into all her Pretensions by defect of punctual payment, they should have declared it by an express Clause, which should have reserved those Rights to the Queen in case of failing, the rather, because in the same Renunciation they do specifie

L. 1. ff. de usucap.

cifie two other caſes in which ſhe may be re-eſtabliſhed in her Rights. If the intention of the parties had been to extend it to this, they would not have failed to explain it as clearly as the reſt, being that it was as important and as likely to happen. By which it may be ſeen that this word [*providing*] is no reſtrictive Condition, which ſuſpends the Act of Renunciation, or which can annull it, becauſe it is not ſaid, that in caſe of payment ſhe ſhall renounce; (for in that caſe ſhe would not have been obliged to renounce till after the payment, or at leaſt under the ſame condition:) but thereby it is onely meant that ſhe ſhall content her ſelf. And he ſubjoyns the cauſe independent of the Portion; *By reaſon ſhe ought to remain excluded of all of whatſoever condition or nature, &c.* which cannot ſignifie any other thing but that by a preceding Agreement between the two Kings, for the Reaſons of State above mentioned, ſhe was to remain excluded. In effect, there can be no pro-

probability that for five hundred thouſand Crowns of Gold ſhe would ever have renounced the hopes of ſo great a Succeſſion, if ſome other more powerfull Motive had not given the weight to this Reſolution: and albeit even the payment of the Portion were one cauſe of the Renunciation, they cannot deny but there are others more principal and ſuperiour, which do concurr thereunto; and in this caſe reſpect is to be had to the chief and predominant, and to the End that was propoſed in this Deed.

In truth it is a thing which occaſions pitty to ſee this Queſtion moved between Kings, and that the ground of a War is lay'd upon a Subtiltie which private perſons durſt not diſpute in Juſtice. It is certain in Law, *Argumento L. 2. Cod. ff. Quando liceat ab empt. diſc.* that regularly Contracts are not annulled by the defect of accompliſhing the Conditions within the time, unleſs there be ſome expreſs and particular Clauſe annulling them in that caſe, otherwiſe the Action competent to the

Actor

Actor by virtue of the Contract againſt him who hath not performed it would be extinguiſhed: which is certainly falſe; for he who hath ſold an Inheritance, and hath not received the Price, hath right to purſue his payment and dammages, but not to retract the Bargain; and he that hath not pay'd within the time ceaſes not to have a legal Action to pretend to the Inheritance by fulfilling the Contract, and repairing the Dammage occaſioned by the delay. It is the ſame of a Husband who demands the Portion, who is of the ſame condition as a Purchaſour. In this point the *French* Lawyers do agree; and alſo upon the particular caſe of Renunciations made ſimply in contemplation of the Portion, they hold that the defect of payment doth not annull them: and the general Rule is, That as the ſole Conſent of the Parties conſtitutes the eſſence of Contracts, it is alſo their Conſent alone which is able to diſſolve them; which hath no place neither but when things are ſtill in their integritie. When

L. n. ff. de Act. empt.

L. 14. Cod. de reſc. vend.

L. 19. ff. de obl. & act.

L. 1. cod. quando lec. ab emp. diſc.

When the Portion hath not been pay'd, no person hath right to demand it from the Husband, though in the Instrument (as it happens oftentimes) it be inserted that it hath been received. And in this case the Husband may propound his Exception, *non numeratæ pecuniæ*; of which he would have no need, if by the default of payment the Contract were annulled. *L. 1. cod. de dot. caut. non num.* *Lib. 3. cod. eod.*

All the Allegations which he cites upon this Subject are out of the Case, or else make against himself. That which he urges out of *Baldus* may help us to convince him of his errour; *Pater dotavit Filiam de bonis Uxoris: numquid ista Filia habebit regressum ad bona paterna? Respondeo quod sic, quia ista non est cum effectu a Patre dotata.* He doth not say that she is not endowed, but onely that she hath not received the effect of her Portion; and this Recourse which he leaves her to the Goods of the Father for her Portion shews that it is truly settled, since she hath right to Bald. *in l. neque mater.*

pretend to the effect of it. But that makes nothing to the prejudice of the Renunciation; on the contrary it confirms it, by leaving her the right to purſue for the Portion. It is the ſame of the Allegation which follows in the Dialogue. *Bened. in Cap. Raynut. in verb. Duas habens uxores.*

The Laws which he cites to prove that the Portion is not conſtituted if it be not pay'd, and all the others, are evidently underſtood of the effects of the Portion, which fall to the charge of the Husband; it being unjuſt that he ſhould be charged with a thing which he hath not received. If pains be taken to examine theſe Laws, it will be found that they cannot be interpreted in any other ſenſe, and in effect the Portion muſt needs be conſtituted, ſince it is due, and that the Husband hath right to pretend unto it. A thing which is not cannot produce an Action. The Law which he cites, *Traject. ff. de Obl. & Act.* is altogether out of our caſe,

L. 1. ff. de dot. L. dotale, ff. de fun. dot.

caſe, and applied beſide the purpoſe: It ſpeaks onely of Contracts wherein a Penaltie is expreſly ſtipulated againſt him who fails to ſatisfie, and concludes no other thing, but that he is obliged to pay the Penaltie, if he cannot ſhew that the defect came not by his fault, the Contract as to the remainder continuing in its full vigour.

L. traject. ff. de Obl. & Act. Pœna (utſi aſſolet) ob operas ejus, qui eam pecuniam peteret, in ſtipulationem erat deducta.

But when the Debtor hath failed to ſatisfie through the fault of the Creditor, who hath not accompliſhed on his part the eſſential Conditions of the Contract, then it is out of controverſy that the delay ought not to be imputed unto him, and that he is not obliged, neither to the Intereſts, nor the reparation of any Dammage, although there were a Penalty expreſly ſtipulated in the Contract.

Argumento L. 23. ff. de Act. & Obl.

If we would reduce this buſineſs to the rigours of the Civil Law, we ſhould have a fair field to prove by their own Principles, that all the delay in the payment of the Portion ought not to be imputed to any other

partie but *France* it ſelf, if it be true (as they ſay, and we ſtrongly do deny) that the Renunciation is founded ſolely upon the Portion, that they are Inſeparables, and neceſſarily depending the one upon the other. It follows then by a clear conſequence, that the King neither could nor ought to pay the Portion, untill he had gotten all the Securities which were by the ſame Treatie promiſed to eſtabliſh abſolutely the Renunciation. Wherein they muſt needs agree, that in the IVth Article of the Contract of Marriage it is expreſſed in formal terms, that the moſt Serene Infanta, after the Act of Renunciation which ſhe ſhall paſs before the Marriage, *ſhall make juſt ſuch another joyntly with the moſt Chriſtian King, as ſoon as ſhe is married with his Majeſtie, which ſhall be Regiſtred and paſſed in the Parliament of* Paris *in the form and with the Clauſes accuſtomed, &c.* This Act not onely hath not appeared, but likewiſe they make uſe of their own omiſſion againſt us for one of the proofs

proofs of the Nullity; they complain that ſince the Marriage the Queen was made paſs a ſecret Act which *France* hath not ſeen. But he doth profeſs it more clearly in the 23. page, where, albeit he hath elſewhere confeſſed the King's Ratification, he doth not ſtick to call it in doubt again in theſe words: *But after all this*, Spain *having made the Infanta renounce poſteriourly to her Marriage by ſecret Acts, which the* Spaniards *never durſt let come to light, who is it that can imagine that the moſt Chriſtian King hath validly ratified what he never ſaw, &c?* All this diſcourſe contains as many Untruths as words: but we muſt judge them from their own mouth. The moſt Chriſtian King and Queen were obliged by a Contract of Marriage (which is a Member of the Peace) to make a new Renunciation in the ſame form as the precedent, as ſoon as the Marriage was accompliſhed, and cauſe it to be Regiſtred in the Parliament of *Paris*: He denies

that this was done, and declares that the King never ſaw it: He maintains that the Portion was neceſſarily and inſeparably tied to the Renunciation; they have not ſatisfied this neceſſary and inſeparable Condition, and for their failing to have ſatisfied, they will needs impugn the Renunciation, becauſe of the delay of payment, which could not be accompliſhed until that they had given the Securities requiſite for the Renunciation. We leave it therefore to be judged of, to whom the delay of payment is juſtly to be imputed, which hath been offered divers times, and is offered to them at preſent, if they would but perform the Condition which was promiſed.

Moreover it is clear in Law, that the payment of a Debt may be retained by way of compenſation of another liquidated pretenſion. And ſo was it practiſed at the payment of the Portions of the two Princeſſes, *Anne* Infanta of *Spain* and *Elizabeth* of *France*, married to *Philip* the IVth and

and *Lewis* the XIIIth. It is certain that in the VI. Article of the Peace his Majeſtie doth abſolutely renounce all his Rights and Pretenſions upon *Alſatia*. This Renunciation is founded upon a Proviſo much more efficacious then that which is contained in the Queen's, which cannot be imputed to any other cauſe then that which is expreſſed in the words following; *By means of which Renunciation his moſt Chriſtian Majeſtie offers to ſatisfie the payment of three millions of livers, which he is bound to pay unto the Arch-Dukes of* Inſpruck.

This Obligation is contained in the ſame Inſtrument of the Peace, which is all but one Deed with the Treatie of Marriage and Renunciation, by which the Portion is promiſed: the one and the other are equally obliging. If the moſt Chriſtian King have been able to diſpenſe with himſelf without breaking or annulling the Treatie, he cannot pretend that the delay in paying of the Portion is more rigorouſly interpreted. There

was no cauſe on our part which hindred him from ſatisfying this Obligation. It ſerves for nothing to ſay that it was not the King to whom he owed this ſumme, ſince it concerned the King that it ſhould be pay'd, that it is he who hath renounced, and that it is he to whom the Promiſe was made in the Treatie; and conſequently it is to him that the moſt Chriſtian King hath contracted the Obligation to ſatisfie the moſt ſerene Arch-Duke.

By theſe Principles the ſecond Objection falls to the ground of it ſelf: Though we ſhould acknowledge that the Infanta hath not been endowed with her Paternal Goods, the Renunciation would not ceaſe to remain in its force, as being eſtabliſhed upon more powerful Foundations then that of the Portion; and at the worſt the Queen would not have in this caſe any other right then to pretend a Legal Portion.

But to ſhew that our Right abounds in Reaſons, and that on which

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ſide ſoever it be attaqued, they can finde no weakneſs in it; I will briefly demonſtrate that all this diſcourſe which he urges ſo ſtrongly is built upon a falſe Suppoſition.

The Queen was provided not onely according to the practice accuſtomed to the Princeſſes of *Spain*, but much beyond that, as it appears by the very Deed of Renunciation, in theſe terms: *It is a very competent Portion, and the greateſt which hath yet been given to any Infanta of* Spain, *and this in conſideration of the Perſon of the moſt Chriſtian King.* Portions, as I have already ſaid, are not regulated betwixt Kings by the eſtimation of the legal Portion, but by a Cuſtome which they eſtabliſh in their Royal Families, which paſſes in ordinary ſtyle, and is ſubject to no Controverſie: elſe to take it in rigour, the Princeſſes of *France* would have been very ill provided with five hundred thouſand Crowns. The eſſential reaſon of this Cuſtome is, becauſe the Princes, who are the

Authours

Authours and Interpreters of Laws, conſider the Soul more then the Body, and without ſtaying upon words ought ſolely to take hold of the Reaſon from which they have taken their firſt beginning. Now it is certain that the Portion given in Marriage is inſtituted to help the Husband to undergo the charges of the Marriage, and the Legal Portion to keep the Children out of neceſſity, and after the death of the Father to ſupply the defect of the Aliment which he did owe them whilſt he lived. All theſe Reaſons do ceaſe amongſt great Monarchs, whoſe high Fortunes ſhelter them from ordinary Wants, and who ought to propoſe unto themſelves in their Marriages more noble and ſolid Intereſts then that of a petty ſumme of Money. This is the reaſon why they do rarely come to the diſcuſſion of Goods, the ſupplement of Legal Portions, Inventories, and other ſuch ways of redreſs which are introduced in favour of private perſons, and are in reſpect of them but meer

meer Trifles; but rather content themſelves with that which the Cuſtome of thoſe Courts with which they treat hath eſtabliſhed for this purpoſe, eſteeming it to be much below their Honour to cheapen a Wife, and to make it appear that they ſeek any other thing in her but Greatneſs and Vertue. In fine, the moſt Chriſtian King did content himſelf, the Queen remained ſatisfied with it. All this did paſs by a Treatie of Peace into the ſtrength of a publick Law; there is no more any remedie.

I ſay yet farther, that ſhe hath been endowed with her Paternal Goods in two ſorts. The one, becauſe all which was granted unto the moſt Chriſtian King by the Treatie of Peace was done in contemplation of the Marriage, as the Marriage was concluded ſolely in order to the Peace. It is a reciprocal Relation, an inſeparable Connexion, one and the ſelf-ſame Treatie, Cauſe, and End; they cannot poſſibly be divided without overthrowing the whole foundation

dation of the Peace. His Majeſtie hath ſacrificed ſo many fair Provinces to the Satisfaction and Good fortune of his Daughter, and the Infanta gave up her Pretenſions for the good of the State, to the Happineſs of this Marriage, and to the Gratitude which ſhe owed to the Bounty of her Father. The Renunciation was reciprocal; that of the moſt Serene Infanta to her Pretenſions was accompanied alſo with the King's to ſo many rich Domains, and even to the Right which he had to *Alſatia*. Nor can it be preſumed with any apparence of Reaſon, that he would have deveſted himſelf with ſuch facility of ſo great an Eſtate, if he had not been invited thereunto by the Love of his Daughter, and the deſire to ſee her reign happily, by heaping Benefits and Satisfactions upon the King her Husband. And if there remained any doubt or ambiguitie as to this, the preſumption is in favour of the Father.

Before I do enter into an exact Account

Account with ſuch ſevere Merchants, I muſt firſt declare that the ſpecification of the Portion contained in the Treatie of Marriage was not the ſquare of the late King's Bountie, and was thus expreſſed onely to ſatisfie the Forms uſed in the like Treaties, according to the ſtyle of the Court; but it hath extended it ſelf far beyond that, to conſiderable ſumms of money which he gave her in Jewels, Plate, and Silver, and to what elſe could be found rareſt in all his Kingdoms: and that ſhe her ſelf doth avow in the Renunciation, that in conſideration of ſo many Bounties, ſhe did renounce with all her heart all her Maternal Goods, not onely by way of Renunciation, but alſo of *Donation amongſt the living*, regard being had to all thoſe Benefits, and becauſe *he deſires and procures her Satisfaction and Advantage with ſo much love, having a joynt regard to the Publick, &c.* This Renunciation was covenanted and agreed with the King of *France* preliminarilie, and before

L. Fin. Cod. dot. prom. Alex. in ... ad Bart. in d. l. ... in l. 1. ff. Soluto Mat.

In the Act of the Renunciation pag. 14.

before any other Condition was treated of. This is evident, becauſe the Marriage could not be treated of until the Obſtacle was removed: from whence this conſequence is drawn, That whatſoever the King endowed the Infanta with by way of Portion was purely out of his own Stock.

However, if it behoved us to come to a Citizen-like Account, one might deduct with Juſtice from the Maternal Goods all that was expended for her Maintenance ever ſince the death of her Mother, being certain that whenever the Maternal Goods do exceed the value of the Portion, the Father is really obliged to ſupply it out of his own: but he may deduct the Aliments, which he is not obliged to give when the Daughter is endowed with her own proper Goods. If we would draw this into an Account, it would be found that what hath been already received doth far exceed the Debt. The King did inherit from Prince *Balthaſar* his Son all his Maternal Goods, which, according to the

Bart. *ad L. libertis, §. 3. num. 3. ff. de Alim. L. ſi quis, §. ſi vel parens, ff. de Lib. Agn.*

the Law of *Spain*, ought to return to the Father. The Law which deprives the Fathers and Mothers of this Succeſſion in caſe of Second Marriages is reproved by the Canons; it never had other cauſe or reaſon, then to put a bridle upon Marriages which are made out of Covetouſneſs to the prejudice of the Children of the Firſt Bed. But the Second Marriage of the deceaſed King was an inevitable Neceſſitie of State, the univerſal deſire of the People, and a preciſe Obligation which he owed unto his Subjects and his Houſe. Monarchs ſhould act by Principles quite different from thoſe of the vulgar; and if one would tie them in publick Acts to the ordinary Laws, all their Conduct would be diſordered, by rendring of them uncapable to provide freely for the publick Neceſſities. Poſſibly the Jewels were not delivered *in ſpecie* to the moſt Serene Infanta; but threefold more at the leaſt hath been given her. It is not the cuſtome of Kings to take Acquittances,

tances, nor to keep Regiſters of all that they beſtow upon their Daughters; they pour out upon them with full hands, without account and without meaſure: they are not accuſtomed but to Treaties depending upon ſincere faith, juſtly ſcorning thoſe little Formalities which are not eſtabliſhed for them.

But though all this were not ſo, is it a matter which merits all this ſtirre, that all *Europe* ſhould be troubled, and a War raiſed again, which hath coſt ſo much bloud, ſo many tears and Deſolations to Chriſtendome? Though the moſt Serene Infanta could not have renounced her Maternal Rights, all ſhe could then pretend would be to be repaired upon this Head, *Vtile per inutile non debet vitiari.* We ſee it almoſt in all Contracts which have any defective part, the Body doth not ceaſe to ſubſiſt though ſome Member of it be cut off, providing the ſubſtance of the Contract be not altered. This is a general Rule which can ſuffer no exceptions, but when the

L. 1. ff. ſed mihi de verb. obl.

the two Members, whereof the one is defective and the other legitime, are so inseparable that the one cannot subsist without the other, or that the Parties have expressly and necessarily joyned them together in the Treatie by some particular Clause. But in this present case these are two things of a different nature, which have nothing of common to both; the one is a Right acquired and present, and the other an uncertain hope; they are derived from two several fountains; they concern different matters, and of great inequality as to their importance; the one doth not destroy the other: the one is a principal, and the other accessory; the one a Domestick, and the other a matter of State: in a word, they cannot be mixed without bringing all things into confusion. *L. 7. ff. d Arb.*

He cites two Texts upon this Subject which do make absolutely for us: *Non excluditur per Renunciationem nisi à successione dotantis; unde si de propriis bonis Filia fuerit dotata, non est exclusa:* Bened. *in cap.* Raynul. *in Ver.* Duas habens uxores.

cluſa: His meaning is, that ſhe is not excluded from her Maternal Goods although ſhe have renounced them, but that the Excluſion remains firm as to the Goods of him by whom the Portion is conſtituted, againſt whom ſhe hath an Action to make him pay it out of his own Eſtate.

The other paſſage which he alledgeth out of *Covarr.* doth yet better explicate the former: *Erit intelligenda hæc Conventio in hunc modum, ut mille aurei ſint dandi ex bonis Paternis, non ex Maternis.* Whereby it is ſeen that the Renunciation is not annulled, but that the Daughter hath onely recourſe for the Portion promiſed her againſt the Father's Goods. He limits farther even this Decretal, when the Daughter hath confirmed the Renunciation by Oath; unleſs there be Fraud on the part of the Father, or ſome notorious Læſion on the part of the Daughter: and we have made it clear that they cannot here oppoſe to us either the one or the other.

It would require great Volumes to

to make appear by parcells the Falſities in matter of Fact, the Allegations out of ſeaſon, the captious Sophiſms, and the continual Cavills which are packed up into this Work: It is a buſineſs of more time and leiſure then the trouble in which they have put us doth allow. I think I have ſaid enough upon this Subject to convince all reaſonable underſtandings: and to make an end of confounding our Enemies, I will content my ſelf by concluding with this Argument: That if they will reduce, againſt all manner of Reaſon, the publick Treaties made between Kings to the Forms and Subtilties of litigious Pleading, they ought to follow the ſame Rules in their Proceeding; if they do intend to make a Proceſs of it, they ſhould not make it a War. Never yet was it ſeen that Legal Portions or Reliefs were pretended to with a Dagger at the throat, nor Contracts reſcinded by ſtroke of Sword, nor the firſt Citations made by forty thouſand men. Either let us decide this matter

by publick Right, and by the Faith of a ſolemn Treatie made betwixt Crown and Crown; or if they have a mind to bring it to the formalities of the Barr, let us not ſtray from its ſtyle, which doth not permit Violence to uſurp upon Juſtice: and that which the Kings of *France* do not practiſe towards their own Subjects when there is any Difference between them to be decided by the Civil Laws, they ought not to attempt it againſt a Monarch who doth not hold of them, and who is ready to refer his Cauſe to the Judgement of all the Princes of *Europe*. But they are far from this thought, they'l have no other Arbiter but Arms; and if in appearance they do ſometimes call for the aſſiſtance of Juſtice, it is but to make it ſerve as an inſtrument of their Violence: They make uſe of her own Laws againſt her ſelf; they make her raiſe Difficulties, but will not ſuffer her to reſolve them; they are content ſhe plead, but not that ſhe decide; and at the ſame time when they make her

her enter into Combat, they tie her hands, they ſhut up all the approches to her, they will not permit her to pronounce, and do ſo pervert the whole order of things, that to eſtabliſh a Chimerical Right, they make it a private Buſineſs, and that they may put it in Execution, they make of it a matter of State.

ARTICLE V.

That the Succeſſion of the Sovereignty of the Dutchie of Brabant, *and other Provinces ſpecified in theſe Libells, ought not to be regulated by particular Cuſtoms.*

THE eſſential Sovereignty is in God, as in its ſource; thoſe which we do reverence here below are Rivolets that flow from thence: It deſcends from Heaven to Earth, and

ſpreads it ſelf in divers faſhions amongſt the Creatures, according to the Subordination which is neceſſary for the Government of the World. It communicates it ſelf in the ordinary way principally and immediately to Monarchs, to Princes, and ſometimes unto the whole Body of the People, which remits it voluntarily to thoſe Magiſtrates whom they chuſe, and reduces it into the form of Government which ſeems to be fitteſt for their happineſs. Some of theſe are abſolute, and hold it of God ſolelie; others are Sovereigns in regard of their Subjects, but with ſome tie of Dependencie upon a Superiour Power: and as thoſe do derive immediately from the Infinite Power above; ſo theſe do proceed gradually through the Chanel of that Sovereignty to which they are ſubordinate; this is its Rule and origine, having no other Power nor Juriſdiction then that which is conveyed unto it through this Organ, becauſe being nothing of it ſelf, but according to the will

will of the Inſtituters, it can exerciſe no other Right then what it hath ſo received from it. If Sovereignties were regulated by Local Cuſtoms, it would be as monſtrous a thing as if Kings would preſcribe limits to the Providence of God, or as to ſee Streams run back upon their Fountain: The Order of the World, which ſubſiſts onely by theſe degrees of Dependencie of the leaſt upon the greater, muſt be abſolutely overthrown: the Servants would become Maſters, the Sovereigns ſhould be Subjects, and the hereditary Sovereignties be in the ſame condition with Villages and Farms. The Eternal Law, which is the very Wiſedom of God, is the rule of all Laws: and as that is properly the Idea of the Law of Sovereigns, ſo that of Sovereigns is the Model of particular ones, which take from it all their ſtrength and vigour. If an Equal cannot have any command over his Equal, it would be much more unreaſonable that the Inferiour ſhould have it over him whom he acknow-

ledges for his Maſter, and that the particular Cuſtoms eſtabliſhed between Subjects ſhould preſcribe unto their Sovereigns the order of their Succeſſions. All that there is of Juriſdiction and Power in ſubaltern Fiefs, is found in a more excellent manner in the commanding Fief: But all that there is of Servitude, Dependencie and Subjection in them, regards not the Sovereignty, and cannot reflect upon it from beneath upwards; theſe are Reſtrictions and Limitations which cannot proceed but from a more elevated Power. So that the Sovereign Fiefs which hold of a higher Juriſdiction can receive no limits to their Authority but from the direct Lord, who is alſo to regulate himſelf therein according to the extent of that Power which he hath over them, and according to their firſt Inſtitution; for he may not impoſe new burthens upon them farther then thoſe upon which from the beginning they did agree in the regulating of the Fief.

To diſcourſe ſolidly of this matter, two things muſt be carefully examined and taken from their true foundation.

The one is the nature and the firſt Origine of the Dutchie of *Brabant*, and of the other Provinces to which *France* doth pretend: the other is the Origine, the quality, the end, and the extent of the Local Cuſtom, which hath introduced the Right of Devolution.

As to the firſt, it is out of controverſie that a part of the Dutchie of *Brabant*, though Sovereign in it ſelf, doth in ſome ſort hold of the Empire; I ſay, in ſome ſort, becauſe as well by its own nature, as by its Privileges, it is exempt from many Subjections which are proper to other Imperial Fiefs, though Sovereigns and Lording. This then muſt be conſidered in two manners; the one in the Dependence which it hath of the Empire, and the other in the Sovereignty which it hath over its Subjects. Touching the firſt, it cannot extend beyond

yond the terms which are expreſsly preſcribed by the Inveſtiture. So that it cannot receive from any thing elſe any other reſtriction of its Power, unleſs it doth voluntarily impoſe it upon it ſelf. And for the ſecond, it belongs to it to eſtabliſh Laws, and communicates its Power to its Inferiours as much as ſhall be thought good, and reſtrains it within juſt limits.

Moreover, although theſe be Sovereignties in themſelves, they muſt alſo be look'd upon as chained together by an undiſſolvible tie, and as annexed to the Body of the Monarchy of which they are the Members and the Parts.

If we conſider them in themſelves, we ſhall find that in their Succeſſions the Males ought to be preferred to the Females; and that this Order hath been ſo regularly obſerved in all times, that not ſo much as one example can be ſhewn where the Daughters have ſucceeded to the excluſion of the Males of the ſame Line; as may be ſeen in the Genealogical Table

ble of the Trophies of the Dutchie of *Brabant*, written by *Chriſtopher Butkens*. I ſay more, that the primitive Inſtitution of the particular Fiefs of *Brabant* was made in favour of the Males, and that the Right of Devolution was afterwards introduced among them for particular Ends; ſo that if the Devolution doth hinder them from Alienating, it is but an Obſtacle introduced by private perſons, which hath inſenſibly gotten the force of a Cuſtome among them; and being onely a particular Right, it can neither tie the Prince nor the Sovereignty, becauſe it comes but from a ſimple Cuſtome and Conſent of the Subjects, who have no Juriſdiction over the Superiour Power. So that to judge of the Right of Succeſſion of the Lording Fief, one muſt look into the firſt Original thereof, and into its proper nature independently of all that is inferiour to it.

If we conſider the principal End of this ordinary Cuſtome, which preferrs the Males before the Females even

even in the Succeſſion of particular Fiefs, we ſhall find that it is for the conſervation of Noble Families, for fear their Eſtates ſhould paſs to and be confounded in ſome other Houſe, to the prejudice of them who are able to uphold the Splendour, maintain the Name, and perpetuate the Line of them. Though this benefit in ſome ſort do redound to the good of the State, it is but by an indirect reflexion, and by the relation of the private to the publick; and 'tis for this that it may be derogated from in conſideration of another private good, if it be eſteemed to be equal or of greater importance then the other. But the conſervation of Sovereignties is a good which directly concerns the State, againſt which no private Reaſon can prevail; otherwiſe what Diſorder would it be in the World, if we did ſee Sovereignties liable to the change of Maſters every moment, and paſs under another Dominion? How many cauſes of War and Revolutions would ariſe

from

from ſuch a ſtrange Conſtitution, which could not but offend all Laws and good Politie? How unworthy a ſpectacle muſt this be and what an heart-breaking to faithfull Subjects, to ſee their Princes and all their Line reduced to povertie, whilſt a Daughter ſhould elevate to their Throne ſome Stranger-Prince? If theſe inconveniences be compared with the particular good which ariſes from the Devolution, it will be found that the one is but an Atome in compariſon of the other; and that there is no kind of appearance that the very People, though it had been in their power, would ever have been ſuch enemies to themſelves, as to have expoſed themſelves to all theſe dangers, by ſubjecting their Prince to their Cuſtome, and taken pleaſure to live under a Dominion ſuſpended in the Air, and expoſed to all Winds. On the contrary, Sovereigns in one thing ſeem to be in a worſe condition then private perſons; becauſe in the greateſt part of States which are well governed,

verned, they cannot alienate any parcell of their Dominions, they are in ſome kind Slaves to the Publick good, they cannot doe advantage to a younger Brother to the prejudice of the Elder, and are ordinarily ſo tied to the regular order of Succeſſion, which preferrs the Males and the Eldeſt, that they cannot follow the motions of their Affection to the prejudice of this Rule, which the Safety of the State renders not to be diſpenſed with: how then can it be overthrown and deſtroyed by a local Cuſtome, inſtituted to an End which cannot be put in the balance with the Utilitie which proceeds from this publick Law? In effect, If we look upon the order of the Succeſſions of the Dukes of *Brabant*, and of the Princes of the other Provinces in the *Netherlands*, it will be found that they have alwaies deſcended from Father to Son, as long as that could be had, and that in no caſe they have been divided nor ſhared among many Children, though there have been often ſundry Males

of

of the ſame Bed. As is ſeen in *Godfrey* the Firſt, who left two Sons of his firſt Marriage, *Godfrey* and *Henry*; *Godfrey* his Son ſucceeded ſinglie to the Dutchie: and of three Sons which he had, *Godfrey* the Elder, ſtyled the Third, ſucceeded alone: he had two Sons by his firſt Wife, *Henry* and *Albert*; the Elder onely ſucceeded to the Dutchy, as *Henry* the Third had done; and the ſame throughout the whole Succeſſion. From whence I draw two Conſequences: One, That the Sovereign Fief is by its nature indiviſible; which ſhews that the principal end is to conſerve it entire in the Family, which were unuſefull, if it muſt deſcend to the Daughters of the Firſt Bed, to the excluſion of the Males; for in this caſe it would import very little that it were diſmembred, and it would be more juſt and more convenient to divide it, at leaſt among the Children of the ſame Bed. The other is, That by this Indiviſibilitie it is different from particular Fiefs, which, accor-

Butkens, *pag.* 107, 113, 133, 204, 270, 232, &c.

ding

ding to the Feodal Cuſtoms, are partable beyond the Forreſt at the choice of the Eldeſt; and on this ſide, though there were but one Fief, the Eldeſt hath but two Thirds, and the reſt belongs to the Brothers, excepting to the Eldeſt the Caſtle, and a Capon's flight: which being unpracticable in a Sovereign Fief, 'tis evident that there is a manifeſt difference, and that the one hath for its end onely the particular good of Families, and the other the good of the State, which chiefly conſiſts in keeping the Sovereignty as long as is poſſible in the ſame Line, that it may not be expoſed to continual Changes. So that being of a different nature, we cannot draw any conſequence from the Fief to the Crown, nor ſubject the Lording Fief to the Local Cuſtoms, which be of another nature and for other ends. This difference is the more remarkable, by reaſon that the ſubſervient Fiefs which Princes do poſſeſs are of another nature, and ſubject to other Laws then the Sove-

Chap. 21. of the Feodal Cuſtoms of *Brabant.*

Sovereigntie, and do not depend of one and the ſame Juriſdiction; as is to be ſeen in *Butkens*, in the Charters of the year 1222. And it is out of doubt that theſe may be divided, and the other not, as is clear by the XXI. Article it ſelf, which I cited before: and even the Cuſtoms of *Lovain* were decreed with this Clauſe; *Without prejudice to the Rights and the Superiorities of the King.* Which clearly demonſtrates, that in the toleration or approbation of theſe particular Cuſtoms, the Sovereigns never meant to ſubject their Sovereignties; and that the Conſequence which they draw from the one to the other cannot be of validitie betwixt two ſuch diſproportionate things. In the Cuſtoms of *Brabant* and the other Provinces, which the King hath approved, this Reſervation is ordinarily found, *Without prejudice to our Rights and Authorities.* A notable difference is yet to be obſerved here, which is, that private perſons may derogate and do

daily derogate from the Devolution by their Treaties of Marriage, or by Teſtaments, to preſerve the free diſpoſition of their Goods to themſelves, and to hinder the Daughters of the Firſt Bed from coming to exclude the Sons of the Second; which Princes have never practiſed, though much more concerned in conſerving their Succeſſions in the Maſculine Line, and would not have failed to uſe thoſe Precautions as well as private perſons do againſt this Cuſtome, had they believed that they were ſubject unto it as others are.

We ſhall be yet more confirmed in this opinion, if we conſider that, far from having a minde to diſmember any of thoſe Provinces by virtue of ſuch a Cuſtome, they united them together by an inſeparable Concatenation, by a Sanction eſtabliſhed by the Supreme Authority, and received by the univerſal Conſent of all the People: ſo that it hath paſſed ever ſince that time, and is ſtill held at preſent, to be a Fundamental Law. I will

will ſatisfie in the following part of this Article ſome light Scruples which the Author of this Writing forms thereupon: In this place it ſhall ſuffice me to deduce from it an evident Argument, that the intention both of the Sovereign and the People hath been much oppoſite to that of ſubjecting them to Cuſtoms, which would expoſe them upon all moments to the danger of being diſmembred and diſtracted into other Families.

In fine, they are Members of the Monarchie of *Spain*; and though they do live under their own Laws and particular Cuſtoms, and enjoy peaceably their own Privileges; they are notwithſtanding Members of it, and depend upon it as Parts of the Whole: ſo that if there were no Law nor Cuſtome eſtabliſhed for the Succeſſion of their Sovereignties, it would be much more juſt and convenient to regulate it by the Law of the principal Kingdom whereunto they are Acceſſories, then by a Local

The Dialogue, *pag.* 39.

Cuſtome, which hath no place but among Subjects: and if this ſame Authour doth avow, that where there is no Law eſtabliſhed for the Succeſſion of a Sovereign Fief, it may be regulated by the Laws of the neighbouring States; we ought here with a far juſter title to conform our ſelves to the order and practice of other Kingdomes to which they are united, and under the ſupport and the protection of which they are maintained.

Here may be obſerved (in paſſing) the incompatibilitie which we meet with in the Diſcourſe of this Writer: He will have it that the Sovereign Succeſſion of theſe Provinces is ſo to be ſubject to the Local Cuſtome of the Devolution, that it can no ways be diſpenſed with, neither for the good of the State, nor by the Renunciation of her to whom the Right is devolved, making a ſimple Cuſtome of private perſons paſs for a Fundamental Law of the State: but by the ſame Diſcourſe it evidently

evidently follows, that theſe Provinces neither can, nor ought ever to fall under the Dominion of *France*, becauſe the *Salique* Law, by virtue whereof they do pretend that all their new Acquiſitions muſt be ſubmitted to the ſame Rule to which the ancient Dominions are ſubject, would pull up by the root this very Devolution, which at preſent they will have to be unalterable, and alſo totally exclude Women from the Right of Succeſſion, though they were the ſole Heirs: ſo that they will eſtabliſh this particular Right in our Provinces, but onely to deſtroy it by Incorporating them inſtantly into their Kingdom. They make uſe of it to acquire them, and will preſently overthrow it to conſerve them; and do erect this Right in their own favour, but onely to annihilate it afterwards to our dammage. This is an effect of their Nimbleneſs, which knows how to apply wittily all the Laws to their own uſe, that they may make them ſerve as Inſtruments to their Ambition.

It remains now at preſent that we look into the nature and qualitie of this Local Cuſtome, which it is certain is not of the firſt origine of Fiefs, ſince the diſpoſition of them in favour of Males is directly oppoſed thereunto.

It is yet more certain that it doth not flow from the Sovereign, becauſe he himſelf in many places hath not approved of it, and that the ſame Approbation which the People have required of him is a ſure mark that it hath taken its beginning elſewhere then from him; nor can it be ſaid that it hath been formed upon the model of Sovereign Succeſſion, which of its own nature was purely reſtricted to Males, and hath not been extended to Females, but by a privilege limited onely to the deficiencie of Males. It is then to be concluded, that it hath inſenſibly ſlipt in by a Cuſtome which ſome particular Conveniences have introduced. Neither is it univerſal, nor every where uniform, even in *Brabant*: many Diſtricts

are

are totally exempted from it, and others have received it with divers Limitations. The City of *Bruxells*, that of *Antwerp*, with the Country of *Ryen*, the Territorie of *Turnhout*, *Hoochſtraten* with its Diſtrict, a part of the Countrey beyond the River of *Maeſe*, and the whole Quarter of *Nivelle*, are not ſubject to the Devolution. And this proceeds from no other cauſe, but that they have not received this Cuſtome; which in it ſelf is of ſuch a nature, that it is of no force but in thoſe places where it is approved of by the Conſent of the People. How then can any extend to the Sovereigntie, without the Conſent of the Prince, a Cuſtome which doth not oblige the Subjects but in ſo farre as they have expreſly deſired? How can a publick and Fundamental Law be made of a Cuſtome which is not univerſal, nor eſtabliſhed by the Sovereign, and which is tied to the particular circumſtances of Goods and Places? And if the Authours of the Dialogue and

the Treatiſe of the Queen's Rights do avow *the Devolution to be a kind of Penaltie*, how can it be conceived that the Prince ſhould be ſubject thereunto? and that the Fiefs ſubſervient can impoſe by the example of their Cuſtom a Servitude on the Crown? Never in good Logick can the Argument conclude *de minori ad majus*, unleſs it be in matters of Favour.

Fol. 50.

This Cuſtome then cannot paſs for a Law, becauſe it doth not proceed from the expreſs Ordinance of the Prince, but onely from the tacite Conſent of the Subjects, who had no other object therein but their proper Intereſts. The Prince contributed nothing towards it but a ſimple Toleration, and, far from intending to oblige his own Sovereignty to it, he hath not abſolutely approved of it, nor generally in all places. The Feodal Cuſtoms of *Brabant*, be it either for ſuch Fiefs as are on this ſide the Forreſt, or them which are beyond it, and which depend upon

upon the Feodal Court of *Lothier* or of *Genap*, were never approved nor decreed, although they were presented to the Governour to that purpose: and in some others which are approved, the Prince, as I said before, doth expressly except *his Rights and Preeminences*, reserving to himself the power *to change, alter, and innovate them as he thinks fit*; which he could not doe without the consent of the States, if it were a Fundamental Law which did tie up his proper Sovereigntie. And though by way of supposition we should acknowledg that this Custome extends it self to the Sovereigntie; it were ridiculous to pretend that he may not abrogate it in his Familie, since he hath the right both to change and innovate it in those of his Subjects.

But if it were granted to them that such like Customs do reach unto Sovereignties, they would give us a just Right to pretend unto *Bretanny* and the Dutchie of *Burgundie*, where Women ought to be admitted to the Suc-

Succeſſion of Fiefs, not onely by the Cuſtome of the people, but expreſly alſo by the Law of the State, in regard of the Sovereigntie it ſelf: to which purpoſe it will avail nothing to alledge the *Salique* Law, which is Apocryphal among the moſt learned, and which at moſt cannot tranſcend the limits of the ancient Domains of *France*, nor can change but by unjuſt Violence the nature of the Provinces which they do annex to their Crown; but if that might be done by virtue of the *Salique* Law, why ſhould it not be lawful for our King to impoſe on thoſe Provinces which he hath acquired the ſame Law which he doth practiſe in *Spain*?

Having manifeſtly proved by ſo palpable Reaſons that the Local Cuſtoms as well of *Brabant*, as of the other Provinces pretended to, cannot be the Rule of Sovereigntie; it remains that we take notice by what other legal ways they may be regulated: and this cannot be by any but onely the following.

1. By

1. By the nature of the ſaid Sovereign Fiefs, and their firſt Inſtitution.

2. By the ordinary Cuſtome of the Sovereign Fiefs of the Empire, of which ſome of theſe Provinces do hold.

3. By the End for which they are eſtabliſhed, and by the Reaſon of State, and the publick Intereſt.

4. By the ancient and continual Practice in the like Succeſſions.

As to the firſt, it is undoubted that the Sovereign Fief of *Brabant* in its firſt beginning, and by the Eſtabliſhment of the Emperours, was onely reſtricted to the Males, to the entire excluſion of the Females; and that ſince, by the conceſſion of the ſame Emperours, it was extended unto Daughters, but onely in default of Heirs-male, as it is expreſly recorded in the Imperial Conſtitution.

But that of the Emperour *Charles* the Vth, made in the year 1549, doth entirely ſtop the current of all the Difficulties that could be formed on this *Conſt. Phil. Rom. Reg. An.* 1204.

this Subject, by the indiviſible Union which he eſtabliſhed among all the Provinces of the *Low-Countreys*. It is here where the Authours of theſe Libells loſe the Card of their Compaſs, and blunt the points of their darts, endeavouring all in vain to ſhoot againſt this Rock. This Conſtitution is both of the Emperour and of the proprietarie Prince; 'tis univerſal, and comprehends all the Provinces; 'tis ſolemn and authentick, by the general Conſent of all the Eſtates, and the ſubſcription of all the Grandees, of the principal Officers, and the moſt illuſtrious Nobility; it is eſtabliſhed, becauſe it was not onely received, but alſo earneſtly ſolicited by the common wiſhes of the whole People: 'tis a publick Law, which proceeds from the Sovereign Authority, it concerns the Crown immediately, it is founded upon the publick Utility, and hath for its chief End the Preſervation of all theſe Provinces under one and the ſame Lord: The terms

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are clear: *Deſiring above all things to provide for the Good, Quiet and Tranquillity of our Countreys on this ſide, and to keep them together in one body, and that they may be inſeparably poſſeſſed by one Prince alone.* Behold a publick, neceſſary, and inviolable Cauſe, which directly regards the Principalities. But, on the contrary, the Cuſtome of the Devolution is conceived in terms that cannot be otherwiſe applied then to private ones; *If either a Man or a Woman have Children, &c.* Were the Prince comprehended, it would have been expreſſed in words of more reverence, and clearer: but the notice of the Cuſtome expreſly ſaith, that it comprehends nothing but the Fiefs which hold of the Duke of *Brabant*, and (as the Writer himſelf confeſſeth) it is made in favour of the Firſt Marriage, and out of the hatred to Second Beds, which ought rather to be favoured then diſcountenanced in the perſon of Sovereigns, chiefly when they are deſtitute of Heirs-male.

male. But let us go on farther to the terms of the concluſion of this ſame Sanction: *We do enact and decree, that in all our ſaid Countreys Repreſentation ſhall have place in what touches the Succeſſion either of Prince or Princeſſes being capable to ſucceed.* All this Clauſe muſt neceſſarily be referred to the former, as built upon this foundation, *To conſerve theſe Provinces in one Maſs together, &c.* Both the one and the other do totally exclude the Devolution, if it be to be underſtood in that form which theſe Writers do pretend. Moreover, it is evident that this Union of Eſtates cannot conſiſt with the Devolution, becauſe that this Cuſtome is not generally eſtabliſhed in all the Provinces which are comprehended in this Union, whereby it might fall out that the Daughters of the Firſt Bed ſhould carry away a part of them by the Devolution, and the Males of the Second Marriage by the Law of the Countrey ſhould poſſeſs the other; and by this means the order and the

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end of the Sanction ſhould be abſolutely overthrown.

I do profeſs that, reflecting upon all theſe things, I find my ſelf ſeiſed with prodigious aſtoniſhment, to ſee that theſe Writers do not bluſh at the libertie which they have given to their pens, in contradicting of Truths ſo manifeſt and ſo generally received, and that they are ſo effronted as to dare vent unto their own King and to the eyes of all *Europe* theſe extravagant Propoſitions: *That there is nothing more contrary to Hiſtory, nor to the deſires of all the Provinces*, then this Sanction which unites all thoſe Provinces together; *That this Emperour had truly thoughts of doing of it, but that he found ſo open a Repugnancie againſt it, and ſo invincible a one in the inclinations of the Countrey, &c. That he quitted it very ſoon, &c.* Dialogue, pag. 46.

Nothing can be more falſely alledged: This Sanction was received, and is to be ſeen ſtill Regiſtred in all the Chambers of Accounts in the *Low-Countreys*. But the Authour takes up

up a miſtake, or elſe will impoſe upon the Readers who will rely upon his faith; he confoundeth another Deſign of *Charles* the Vth, from whence he deſiſted, with this of the Pragmatick Sanction, which he finiſhed without contradiction. It is true that this Prince had ſome thoughts of erecting all theſe Provinces into a Kingdome, to the ſame Cuſtome and Politie; but having met with great difficulties about the diverſity of Cuſtoms, Privileges, Seals, and Meaſures, he held it not fit to put it in execution: but as to the Union contained in the Pragmatick Sanction, the diverſity of Laws not extending it ſelf to the Sovereigntie could not hinder the Union, ſeeing that in *France* it ſelf, where all the Provinces are inſeparably united to the Crown, they do notwithſtanding live under their particular Laws, which in many places are very different; and when we ſay they are united, we do not therefore pretend that they are reduced into one Province,

but

but that they compoſe all together one aggregate of many Bodies, which cannot be disjoyned. So that 'tis properly to diſtribute Gape-ſeed, and amuſe all *Europe* with the tricks of Jugglers, in alledging for the proof of the contrary, that the King *in his qualities uſes all the Titles of theſe Provinces ſeverally*; as if by having united them he had loſt thoſe Titles, and were leſs Count of *Hainault* for having rendred it inſeparable from the Dutchie of *Brabant*. If the Diviſibility could be inferred from the difference of the Titles, it is clear that how ſuccinct ſoever thoſe of the moſt Chriſtian Kings be, it might be concluded by the ſame reaſon, that that part of *Navarre* which they do poſſeſs might be ſeparated from *France*, whereunto notwithſtanding they will never condeſcend. The paſſage of *Grotius* which he alledges, but doth not quote, is not to the purpoſe, and toucheth not the fact in queſtion, but onely the Deſign of *Charles* the Vth, which preſently I have related. *He*

ſpeaks of the change of the ſtate of the Government of the Countrie, and not of the Union and Indiviſibility of the Provinces, which may be eſtabliſhed among them without any alteration in the Form of their Government, and without changing any thing of the particular Cuſtoms, unleſs it be in what they have of inconſiſtent with this Union.

It is with the ſame confidence that he preſumes to ſay, that this *Pragmatick doth not contain in its diſpoſitive one word of this Union.* And what would then the firſt Clauſe which I cited operate, which is not onely diſpoſitive, but the ground of all the other Diſpoſitions which are contained in the ſame Law? It is the Cauſe and the End of it; and the ſole Reaſon why the Emperour eſtabliſhed the Repreſentation is, to *preſerve the Countries in one Maſs, and that they be inſeparably poſſeſſed by one Prince alone.* This Repreſentation, in which he labours to lodge ſolely all the Diſpoſitive, is but a purſuit and a means

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to attain to the principal End which he hath propoſed to himſelf of the Indiviſibility: but by the diſcourſe of this Authour, the Cauſe would be of leſs ſtrength then its Effect, the Acceſſory would have the place of Diſpoſitive, and the Principal ſerve onely as a ſimple Narration.

This Truth is confirmed by the Conſtitution of *Charles*, *An.* 1549. whereby though he doth confirm the Succeſſion of the Daughters for want of Heirs-male, he ſuppoſes notwithſtanding for the ground of the Sanction, *Nos per Pragmaticam Sanctionem ſuper Jure Succeſſionis univerſalis harum Provinciarum Inferioris* Germaniæ *patrimoniali ac hæreditario Jure ad nos pertinentium providere velle, quòd ſcilicet eædem Provinciæ noſtræ in una Maſſa deinceps beneficio Repræſentationis generaliter in Succeſſione Principis locum recipientis ſerventur, nec ampliùs unquam ab invicem ſeparentur.* And to ſhew that it was at the deſire of the People, he adds, *Id quod jam antea à Statibus* Geldriæ

petitum. Whereby two things are clearly ſeen: The one, That the Repreſentation was not introduced into this Sanction, but as a means for attaining to the principal End of the Indiviſibilitie: the other, That when he admitted the Daughters in the defect of Heirs-male, he would yet preſerve in them the ſame Indiviſibilitie, and that they might not be divided even among many Daughters, as is certain by the words following: *Nè ſcilicet à Ducatu noſtro* Brabantiæ *& Comitatu* Hollandiæ *(in quibus Fœminæ ex antiqua conſuetudine ſuccederunt) diſtraherentur.* And in the diſpoſitive Clauſe wherein he confirms the Succeſſion of Women he doth expreſsly adde this Reſtriction; *non exſtantibus Maſculis hæredibus ſuccedere poſſint.* Whereby it is ſeen that in no caſe they can ſucceed, ſo long as there are any Heirs-male.

I ſhould never have done, if I would ſtop at each of their Cavills: The Declaration which he doth alledge of *Philip* the Second is one, but

but ſo ill fitted to the purpoſe, that it makes me pitty them. He ſaith that in the Confirmation which he made of the Privileges of *Brabant*, he declared, that *the onely Eſtates that ſhould be united for perpetuity with* Brabant *were* Limbourg, Antwerp, *and thoſe beyond the* Maeſe. Here by the way it is to be obſerved that *Limbourg* was never united to *Brabant*, as *Stockmans* doth note, fol. 174. But what Union ſoever there might be, ſhould they be ſo ill Logicians as to inferr from thence, that the other Provinces are not indiviſibly united with *Brabant?* Should it be poſſible that he ſhould hope to throw duſt in our eyes with this petty Equivocation, by the which he confounds and improperly applies the word Union? *Antwerp*, as he ſays, was united to *Brabant* as to a principal Body, to enjoy with it the ſame Privileges and Seals, and to make up together the Juriſdiction of one Councel: We never pretended that by the Sanction of *Charles* the Vth the other Provinces were united after the ſame

manner, nor that they ought to participate with them in their Privileges. See, I beſeech you, what force this Argument hath: *Antwerp* alone and *Limbourg* were united to the Dutchie of *Brabant*, to enjoy the ſame Privileges; therefore the Sanction of *Charles* the Vth never intended that *the other Provinces and* Brabant *it ſelf ſhould be preſerved in a Maſs, to be inſeparably poſſeſſed by one Prince alone.* *Antwerp* and *Limbourg* onely ſhall enjoy the particular Privileges of *Brabant*; therefore all the other Provinces ſhall be untied from all Union, and may paſs under different Maſters. *Philip the Second prohibited the Infanta* Iſabella *to divide the Provinces*; therefore they were not united. On the contrary, this very Prohibition muſt ſuppoſe that they were united, ſince nothing can be divided but what is united. It makes my heart bleed to ſee poor *Ariſtotle* ſo often buffetted, and the whole form of right Reaſoning, which he ſo ingeniouſly invented, overthrown. On the contrary,

trary, the Prohibition of *Philip* the IId is a Confirmation of the Sanction of *Charles* the Vth. And if the Discourse of this Authour could take place, all the Commandments of God and of Kings might be destroyed: When a Father commands his Child not to be a Murtherer, it might in the same manner be inferred that God hath not forbidden Murther; when a King exhorts his Subjects to Fidelitie, a consequence might be drawn from thence, that they are not obliged to Fidelity by natural Duty and by their Oath; then which nothing can be more irrational.

He goes astray after the same manner by taking the Effect for the Cause, when he saith that this Sanction was onely made *to introduce the Representation into the Succession of the Sovereign.* Whereas, quite contrary, it appears by the terms before alledged, that the Representation is introduced onely to establish the Indivisibilitie, which he himself acknowledges two lines thereafter, by a terrible Giddi- *Dial. p. 40.*

neſs of head, when he mentions the Cauſe which gave occaſion to this Repreſentation: *To hinder that all theſe Eſtates, which the want of Repreſentation expoſed to too frequent Changes, ſhould not be ſo eaſily ſeparated by the diverſitie of Cuſtoms.* We have now no more need of witneſſes; *habemus fatentem reum:* and we ought alſo to inferr thereupon, that the Right of Devolution being much more ſubject to produce theſe *over frequent* Changes then the want of Repreſentation; ſince that the Sanction would introduce the latter for this cauſe onely, it is not credible that its intention was
P. 163. that the Prince ſhould be ſubject to the other, being the ſame Reaſon doth more powerfully ſerve to deſtroy the Devolution in the Sovereign Succeſſion, then it doth to eſtabliſh the Repreſentation in it.

In fine, they ſtumble at every ſtep, and it would require an *Herculean* pains to help them up again every time that they fall. It ſeems that they have had no other care, but to make up

up a heap of Arguments, without diſcretion and without choice, to dazle rather then to perſuade, and to obtain by their number that which they can never hope for from the ſtrength of their Reaſons.

The Authour of the Rights of the Queen follows the ſame track, and loſes himſelf in his own Labyrinth, who is not aſhamed to utter this Propoſition; That *if the Prince be ancienter then the Cuſtome, nothing can be more glorious for him then to ſubmit himſelf unto it, &c. ſince it is certain that, in this caſe, the Cuſtome is but an Emanation of the particular practice of the Sovereign Familie.* Fol. 168.

Here are as many Errours as words. It is certain that moſt of the Cuſtoms take their beginning from the deſire of the People, and from their private advantage; they do frame to themſelves their own Cuſtome, of which afterwards they deſire the Prince's Approbation, who grants or refuſes it as he thinks good: but by approving it he doth not ſubject himſelf to

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it. Nor is it leſs evident that divers Cuſtoms are convenient for the People, which would be moſt prejudicial to Sovereign Families; as in effect that of the Devolution would be. It is certain likewiſe that *if the Prince be ancienter then the Cuſtome*, he hath already the Right and the Form of his Succeſſion regulated before the Cuſtome, and this Regulation, being a Sovereign Law, can never be altered by a particular and inferiour Conſtitution. He doth profeſs in another
Pag. 166. place, that the Sovereignties *have particular attributes which do diſtinguiſh them from other Goods.* And in what ought they to be more diſtinguiſhed then in that which regards the Succeſſion, which imports more to the ſubſiſtence of Sovereignties then any other thing? He himſelf doth acknowledge it in the ſame page, *as their being Independents*; and yet notwithſtanding he will make them to depend upon the Cuſtome: *Unalienables*; yet he will ſubject them to a Right which at every moment would

would be the occaſion of their Alienation: and *Indiviſibles*; yet he denies that the Emperour *Charles* the Vth had any power to unite them together. He adds, that notwithſtanding this difference, *they have many things common.* I do agree with him; but that which they may have of common doth not proceed from the particular Cuſtome. The Compariſon of which he makes uſe to prove it is raviſhing and marvellouſly well applied, 'tis of a Man, who participates together both of the Animal and Reaſonable nature. See then according to my apprehenſion how he pretends thereupon to form his Argument. As Man, though ſuperiour to Animals, doth participate of their Nature, and hath ſomething in him which is common to them: ſo the Prince, notwithſtanding he is elevated above the People, yet doth not ceaſe to be ſubject to their Local Cuſtoms. *Riſum teneatis Amici?* But to demonſtrate by this Principle that the Prince is ſubject to Local Cuſtoms,

we muſt by a Moral which is altogether new eſtabliſh this foundation, That the Senſes ought to give law to Reaſon, and that the Senſual appetite muſt govern the Will; otherwiſe all this diſcourſe would prove nothing: this ſtrange Doctrine would make all the Schools rage, and would not take but among the falſe Sectators and the bad Interpreters of *Epicure*. Let us ſay then, the better to conform our ſelves to a more regular prudence, that if Man in ſome occaſions ought to raiſe himſelf above the Senſes, and free himſelf from the ſubjection of the inferiour part; it is principally in thoſe Actions wherein the eternal Succeſſion is concerned, which is his principal and laſt End: and that to deſcend by this Rule from the moral to the politick part, it muſt be concluded that there is no caſe wherein the Sovereign ought to be more independent of popular Cuſtoms, then in thoſe of the Sovereign Succeſſions, which ought to conſtitute the Felicitie of the

the State, and to eſtabliſh a little kind of Eternity in his Familie.

But I perceive that I my ſelf do goe aſtray by playing the Philoſopher with theſe Sophiſters, and that I depart inſenſibly from my firſt deſign of deſtroying their Maximes in one bulk, without tying my ſelf to every parcel of their works. Let us paſs then to the ſecond Rule by which thoſe Sovereign Succeſſions are to be meaſured which do hold of the Empire, to wit, by the uſual Cuſtome in the Imperial Fiefs.

It was never heard of in the Empire that any Sovereign Fief ſhould be regulated by the Local Cuſtoms, that it ſhould be ſubject to the Right of Devolution; and even the greateſt part do totally exclude Daughters, and paſs to the Collateral Lines in defect of Heirs-male.

I have already ſhewn that the Cauſe and the principal End of ſuch Succeſſions is an eſſential Reaſon of State, which abſolutely requires, for the good of the People, and the conſerva-

ſervation of great Families, that the Sovereignties ſhould be maintained as long as poſſibly may be in the ſame Line; and that the practice of the contrary would expoſe the States to continual Revolutions: that this End is incomparably more noble, more elevated, and more neceſſary, then that which doth preferr in ſome places among private perſons the Daughters of the Firſt Bed before the Males of the Second: that the Reaſons which in ſome ſort may make this Cuſtome tolerable among the Subjects, doth no ways concern the Prince nor the Sovereignty: that Second Marriages, which be oftentimes the cauſe of the ruine of private Families, are ordinarily the prop and ſuſtentation of Princes Houſes: that that which others doe voluntarily with an intemperate Incontinencie, theſe are obliged to doe it by an abſolute neceſſity, for the good of the State and their Family: that the Reaſons which have given occaſion to this Cuſtome have no manner of relation to the Sove-

reigntie;

reignty; from whence it muſt be concluded that the Cuſtome can take no place in the caſe where all the cauſes for which it was introduced cannot concurr, and where all the advantages which ariſe from it are counterbalanced by greater Inconveniences.

It remains to ſee what was the ancient practice, and received in all times and without interruption. The Authours of theſe Libells, having conſumed their ſpirits in ſeeking from all parts materials to make their Volume big, could not yet find one ſingle Example which is truely comprehended within the fact in queſtion: Let us trie if we ſhall be more ſucceſsfull. The Sieur *Stockmans* cites ſome very convincing, to wit, the Surrender which *Charles* the Vth made to his Son *Philip* the Second of the Eſtates of the *Low-Countries*, calling thereunto, failling of him, the Heirs which he ſhould have of his Second Marriage, to the excluſion of *Charles* the Son of *Philip* and *Mary* of *Portugal* of the Firſt Bed; to whom nevertheleſs as well as to his Fa-

Stockm. *de Jure devol. cap.* 21. *n.* 9.

Father, becauſe of the Widowhoods of *Charles* and *Philip*, the right of Succeſſion had belonged, if the Devolution could have taken place in the Sovereign Succeſſion. As alſo the Donation that *Philip* the Second made to his Daughter, the Infanta *Iſabella*, under Reſtrictions which were altogether inconſiſtent with the right of Devolution, and which could not have been inſerted to the prejudice of the Dutcheſs of *Savoy* and her Succeſſors. And if the Devolution had taken place in Sovereignties, the Pretenſion of the Queen of *France* would have been at this day annihilated by that of the Duke of *Savoy*, who would be the true and lawfull Succeſſour to it. He cites alſo other Examples, which the Reader may ſee in the ſame Chapter: but, becauſe they are all of *Charles* the Vth downwards, I will reſume the buſineſs from a higher ſource, that I may be the abler to prove the Antiquity and the Continuation of this Cuſtome.

Butkens *Troph. de Brab. fol.* 627.

William, Son of *Godfrey* the III^d^ Duke of *Lothier* and *Brabant* by *Imaine*

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de Los his ſecond Wife, and Brother to *Henry* the Son of the ſame *Godfrey* of a former Marriage by *Marguerite* of *Limbourg*, had for his ſhare the Lands of *Perweys*, *Ruyſbroeck*, and others; which *Godfrey* could not have done if the Devolution had taken place, ſince by the death of *Marguerite* all the Right muſt have entirely been devolved to *Henry*, the firſt, and all manner of Alienation prohibited to the Father, to the prejudice of the firſt Son.

The ſame *Godfrey*, after the death of his Wife, the caſe of the Devolution (if it had taken place in the Sovereigntie) having of neceſſitie happened, married *Henry* his eldeſt ſon Duke of *Brabant* to *Matilda* the Daughter of *Matthew* of *Flanders*, Earl of *Boulogne*, in the year 1179, and there were inſerted into the Contract of Marriage Clauſes altogether repugnant to the Devolution: *viz.* That *Godfrey*, who then was a Widower, gave to his Son, to endow his Spouſe, *Bruxells*, *Vilvorde*, *Vccle*, *Idem, fol.* 129, & 130.

and *Ruysbroeck*, upon condition that if *Henry* deceaſed before *Matilda*, ſhe ſhould enjoy the uſe and profit of thoſe Lands during her life, whether ſhe had any Children by him or not; and in caſe *Matilda* came to die before the ſaid *Henry*, without leaving any Iſſue behind her, then the Earl of *Boulogne*, her Uncle, ſhould hold *Bruxells* untill that he was re-imburſt of her Portion. If the Devolution had taken place, the Father could not have diſpoſed of thoſe Lands, nor aſſigned Portions out of them to the Princeſſes Uncle, to the prejudice of his Son and of his Children, to whom the Right would have been devolved by the death of *Henry*, unleſs that in the ſame Treatie of Marriage they had expreſly renounced the Devolution, of which notwithſtanding no mention is made in the Contract.

Here we muſt alſo obſerve, that in the ſame Contract the ſaid *Godfrey* doth appoint his Son *Henry to ſucceed to him as his Heir in the Dutchy, and his other Lands and Poſſeſſions.* This ap-

appointment would be ſuperfluous and ridiculous, if the Right had been already fallen to him by Devolution. And, which is yet more remarkable, he doth appoint him with a Reſervation too *of the Diſtrict of* Dorten *and the County of* Areſcot, and excludes even the Sons which ſhall be born of this Marriage: which deſtroys from the very foundation the pretended Devolution in the Sovereignetie, and is directly repugnant to the Interpretation which the Authours of theſe Libells do make of this Cuſtom: becauſe if the Devolution be a true Succeſſion, and do attribute the Right of Proprietie to the Children during the Father's life, *Godfrey* could not have appointed his Son in the Succeſſion as Heir after his deceaſe, becauſe he ſhould have already been ſo during his life. And much leſs could he have cut off from a Succeſſion already acquired and devolved to him two Portions ſo conſiderable as the Diſtrict of *Dorten* and the Countie of *Areſcot*, nor have reſerved

ſerved to himſelf the diſpoſition of them in favour of others.

Butkens, *fol.* 131. The ſame *Godfrey* conſented to a Donation which *Gerard* his Son of the Second Bed had made to the Abby of *Everbode*, of certain Lands ſituated in the Pariſh of *Teſſenderlo*; and he himſelf gave to the Abbot of St. *Sepulchers* at *Cambray* certain Lands ſituated in the Land of *Bierbeeck*, for the founding of a Provoſtrie; which he could not have done, to the prejudice of the Prince of the former Bed, if the Devolution might have taken place in relation to Sovereigns, and if this Right had been a true Succeſſion: nevertheleſs the ſaid Donations have remained inviolable, without the intervening Conſent of *Henry*, and without being ſubject to any Recoverie either on his part or his Succeſſors.

The ſame Trophies of *Butkens* will furniſh us with other Examples of this nature; which by Conſequences and neceſſary Inductions ſhew that neither Princes nor their Sove-

Sovereignties were ever ſubject to this particular Rule, nor that in reference to them the pretended Sentence of the Emperour *Henry* was put in practice.

But let us come to the Donation of the *Low-Countreys* made by *Philip* the Second in favour of the Infanta *Iſabella.* All its Clauſes and all its Circumſtances are directly oppoſed to the Right of Devolution. *Philip* the Second could not have given what was not his own; a Donation ſuppoſes the Proprietie to be in him who gives: the Conſent of the Prince his Son would not have been required, nor ought to have been paſſed, as afterwards it was on the 6. of *May* 1598, if the Right of the Succeſſion and of the Proprietie had been fully devolved to the Infanta's his Siſters. This Donation, which was contrary to the Devolution, and alſo to the prejudice of a third perſon, would not have been received in that qualitie by all the Eſtates, as it was the 21. of *Auguſt* of the ſame

year: *Philip* could not have aſſigned them in Portion to his Daughter, as it is certain he did by the ſame Act, and that the Archduke *Albert* accepted and poſſeſſed them by this Title.

To get out of this bad way, they have recourſe to two Shifts, which ſerve only but to diſcover their Weakneſs. They acknowledge that *Philip* gave theſe Provinces to his Daughter, but that it was *to doe himſelf honour by an Imaginary Liberality.* The Duke of *Savoy* ought not to have liked this Game: whence came it then that he did not oppoſe himſelf to *this Imaginary Liberality*, which was really deſtroying all his Right? Is it likely that all the Eſtates of the Countrey and the Tribunals of the Provinces would have approved a Chimerical Surrender, and connived at this Cheat, and under the ſole Title of a falſe Donation tendred their Oaths for the whole to her who ſhould not have been Heir but of a part?

Dialogue *fol.* 55.

The

The Archduke *Albert*'s Treatie of Marriage with the Infanta *Iſabella* doth not onely confirm this Donation, but is alſo an evident proof, that the ſole End of the Pragmatick Sanction of the Emperour *Charles* the Vth above mentioned was the Union and the Indiviſibilitie of all theſe Provinces. It may be ſeen in the 21. Article, *And foraſmuch, &c.* towards the end, where he ſpeaks in theſe terms: *Provided always to be kept and obſerved inviolably all and every one of the Conditions above ſpecified, and the Pragmatick made by the Emperour, my Lord and Father, of Immortal Memory, who may he reſt in Glory, in the month of* November Anno 1549. *concerning the Union of the ſaid* Low-Countreys, *without conſenting or granting any Diviſion of them, or Separation, for what caſe ſoever, nor in any manner of ways whatſoever.* And a little beneath this in the ſame Article he doth oblige both the Archduke and the Infanta, *to ſuſtain, carry on, and maintain all*

and every the Rents, Penſions for life, and all other Gifts whatſoever, which we and our Predeceſſors have given, aſſigned, or granted. He ſpeaks all along therein as true Proprietor; he grants theſe Provinces with thoſe things charged upon them, which he could not have impoſed if the Right of Devolution did reach the Sovereigntie; and much leſs oblige the Infanta, to whom the Right had been devolved. In all the other Articles he ſpeaks as abſolute Maſter: *Item, upon condition, and not otherwiſe.* How can it be imagined that the States would have approved ſo many Clauſes contrary to the Devolution, if they had believed that it had place in reference to their Princes?

I believe that they ſhall have nothing to reply, if I make them ſee that *Henry* the Great (whom the moſt Chriſtian King hath choſen for his Illuſtrious Modell) did authorize this Donation by a ſolemn Treatie, and did acknowledge that *Philip* the II[d] was

II[d] was the right Proprietor of theſe Provinces, and could diſpoſe of them, either by laſt Will, Donation, or in any other manner. This great Monarch and his wiſe Miniſters knew perfectly the nature, the uſe, and the extent of the Devolution in Provinces ſo near adjacent to *France*. If they had conceived that it had had any place in the Sovereignties, they would have been careful not to have treated upon any thing of that kinde, which might have prejudged a Right to which the Kings of *France* might ſometime have acquired ſome Intereſt. Thoſe who treated in the King's name were too circumſpect, and too well verſed in the practice, to ſuffer that any Clauſe ſhould be inſerted in a Treatie contrary to the Cuſtoms, and which one day might prejudice their Crown. From whence it is to be concluded, that the previous Acknowledgment which they made of this Donation which *Philip* the II. deſigned even at that time to make, is a manifeſt confeſſion of their real

ſenſe,

ſenſe, that the Right of Devolution had no place in the Sovereignties, as may be ſeen by the VI. Article of the Treatie of *Vervins*: *'Tis alſo mutually agreed and conſented to, in caſe his Catholick Majeſtie ſhould either give or transferre by Teſtament, Donation, or in any other way, under any Title whatſoever, to the moſt Serene Infanta* Iſabella *his eldeſt Daughter, or to others, all the Provinces of the* Low-Countreys, *with the Counties of* Burgundie *and* Charolois, *that all the ſaid Provinces and Counties ſhall be comprehended in the preſent Treatie, &c.* In this Article *France* doth acknowledg that not onely *Philip* the II[d] might ſurrender, give, and transferre them to his eldeſt Daughter, but alſo to others. *Likewiſe the ſaid Infanta, or he in favour of whom the ſaid Lord the King ſhould diſpoſe thereof, &c.*

The Authours of theſe Libells muſt needs accuſe not onely one of the greateſt Kings that ever reigned amongſt them of a moſt groſs Ignorance, but alſo the ableſt Miniſters

that

that have governed their Affairs, to wit, Monsieur *de Belieure* and *de Sillery*, or they must confess that nothing they have alledged against this Donation hath any subsistence but in their own imagination.

But the States of the Dutchy (as the Authours of these Libells do pretend) *did protest that that Donation should not prejudice their Rights, Customs, and Privileges.* In these few words there be two evident Untruths. The first is, That there will never be found, neither in the Annals nor the Archives, any Protestation of the States against this Donation; and the very texts which he doth cite do clearly shew that they accepted of it in the quality of a Donation. *Scripto Ordinibus caveat, duodecimum Cessionis Articulum* Belgicarum *Provinciarum Libertati & Privilegiis nihil derogatum aut detrimento fore.* This cannot be called a Protestation against the Act, but onely a simple Reservation of their Privileges, under which they accept the Sur-

The same, in the same page.

Surrender, and qualifie it even by this Title; which they would have taken good heed not to have done, if it had been their intention to except the Right of Devolution, which muſt have been deſtroyed by this word of *Surrender*, and conſequently the acceptation would have been contrary and prejudicial to the Reſervation.

The other is, That in the ſame Declaration there is no mention made of the Cuſtoms, as the Writer doth artificially adde of his own head, by a privilege which ſuch Authours poſſeſs by a preſcription of many Ages, to ſay whatever they pleaſe without fear of puniſhment. Nothing is ſaid in the paſſage which he cites, but, *de Libertatibus & Immunitatibus*, and lower, *de obſervandis Patriæ Privilegiis*. Now he himſelf confeſſes that the Right of Devolution is *a kind of Penaltie introduced out of hatred to Second Marriages*. It is not then probable that they meant to comprehend under the name of their Privileges

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and Liberties a burthenſom Reſtriction which bridles them, and againſt which they themſelves do every day ſeek after Precautions and remedies in their Teſtamentarie diſpoſitions. The Reſervation of the States to preſerve their Privileges and Immunities was not done either to oppoſe or contradict the Surrender, which they did freely accept, but onely to hinder leſt by that Ceſſion they ſhould fall to be in a worſe condition then that in which they were under *Philip* the II[d], and did not go farther then to oblige the perſon to whom the Surrender was made to the ſame conditions to which the Surrenderer was bound.

The Authour of the Queen's Rights doth yet run out with more licence upon the ſame Subject, by falſely citing of *Meteren* in his Hiſtory of the *Low-Countreys*. To make this Hiſtorian ſpeak to his fancie, he adds to his Narrative a meer Fiction, contrary to the ſequell and to the ſenſe of his ſtory. *Thoſe of* Brabant

Pag. 206.

Brabant (ſays he) *were ſo afraid leſt it ſhould be thought that the Infanta* Iſabella, *to whom this Dutchy belonged by the right of Devolution, ſhould be conceived to hold it by virtue of the Donation, becauſe no mention was made of any Right.* In the end he applies to this falſe Preamble that which *Meteren* relates of the Proteſtation made by the States, that this Donation might not hurt nor prejudice their Rights and Privileges; wherein alſo he doth maliciouſly change the terms of the Proteſtation, which ſpeaks not *of the Rights of the Dutchie*, as he alledges with his accuſtomed ingenuitie, but onely of their proper Rights and Privileges, *de obſervandis Patriæ Privilegiis*, as the paſſage it ſelf expreſſes, which he hath cited elſewhere. But at the bottom there will nothing be found in *Meteren* that can either directly or indirectly prove, that the States of *Brabant* made the leaſt reflexion upon the Right of Devolution, nor that they refuſed to accept

the

the Donation in this qualitie; but, on the contrary, that they admitted it under the ſame Title, as alſo the Conſent of the Prince *Philip*, which was contrary to the Right of Devolution; and that the repugnancie which this Hiſtorian ſaith divers ſhewed in this rencounter was founded on other cauſes, viz. *That it would be held ſtrange, that the Eldeſt Daughter ſhould be beſtowed upon a* * *Prince who was provided of many Eccleſiaſtical Eſtates, and to prefer him before the Elder Brothers, as the Emperour was.* Which he delivers as diſcourſes and popular Reflexions, according to the ſtyle of Hiſtorians; and would not have omitted to have ſpoken of the Devolution, if it had been but mentioned among the ordinary reaſonings of the people. Even the States of the Province (as this ſame Authour reports) never reſolved to mingle the Devolution among thoſe Cauſes which they alledged for the averſion which they had to the change of a Maſter, but, on the contrary,

* The Archduke *Albert* whilſt he was a Cardinal.

Meteren *l.9.fo.412.*

contrary, they produce other Reaſons which ſeem to deſtroy the Devolution. Their principal Reaſon was, *Becauſe they had lived ſo many years under the juſt and equitable Government of ſo good a King, and that remembring ſo many Favours, they conceived that it was not poſſible to quit their Obedience to him without a continual remorſe of Conſcience.* Which ſhews that they acknowledged him for their true Proprietor, elſe what remorſe of Conſcience could they have had for going to their lawful * Heir by the Right of a Succeſſion Devolved? of which, according to the French doctrine, the King his Father poſſeſſed but the bare uſe and profits, whereof he might have denuded himſelf without giving them any cauſe to think ſtrange of it, ſince that is ordinarily practiſed by the Fathers in the Marriages of their Children, to releaſe unto them the enjoying of thoſe Proprieties which they have acquired. What follows renders the buſineſs much more evident.

* The Infanta *Iſabella.*

dent. They ſubmitted themſelves nevertheleſs (notwithſtanding the conſiderations which they had to the contrary) to the will of the King, & alledged this Reaſon for their ſo doing, viz. *to give them for their Princeſs, his moſt dear Daughter, of whoſe goodneſs and Vertue they had heard ſo much, and withall for coupling her with a Huſband, &c.* They do conſent in conſideration of the goodneſs and Vertue of the Princeſs, and the great Qualities of the Husband, at the ſame time when they profeſs *that he gives her unto them for their Princeſs*; they acknowledge her not to have been ſo before: and if it is the King who gave her unto them, it cannot be the Devolution that placed her in the Throne. It is for this that in the Conſent which they gave to it they ſay, that it was *to conform themſelves to the will of the King, and provided that his Majeſtie would command them ſo to doe:* which they would never have ſaid, if ſo be that they had held the Infanta for their lawfull Princeſs

by a Right already devolved. This Conſent clearly expreſſes, that it was in the quality of a Portion and Donation that the States did receive the Infanta to be their Miſtreſs, as is manifeſt by the relation of the ſaid Hiſtorian; and that they themſelves required the Conſent of the Prince her Brother, in which he doth declare that *he was induced thereunto for certain great Reaſons and reſpects of the Common good, and to the end that his Siſter might be provided for according to her quality and great merit:* he qualifies it alſo with the title of *Donation.* All this is ſo contrary to the Devolution, that I cannot admire enough the blindneſs of this Writer, in having touched upon this ſtring ſo palpablie out of time.

But though by an exceſs of Indulgence all that they alledge were granted to be true, they are not able to draw any other conſequence from it, but that the States, by accepting of this Surrender, did pretend that they were to remain in their ancient

ent Rights and forms of Government: and this cannot be underſtood of any but thoſe Rights which relate to themſelves, without pretending thereby to touch thoſe of the Prince, nor to ſubject the Sovereignty to their Cuſtoms, ſince in effect that would have been an unjuſt and ridiculous Pretenſion, and which would have made to their own Diſadvantage.

Let us remove from this point to that of the Surrender and perpetual Alienation made in favour of the Eſtates of the United Provinces, by *Philip* the IVth, of one part of *Brabant* and ſome other Provinces. This Donation ought to be null according to all the Rules of theſe Writers, not onely for what concerns the Lands where the Devolution hath place, but for all the others likewiſe. As to the firſt, it is certain that the Caſe of the Devolution was already come to paſs in favour of the Prince *Balthazar*, and, failing of him, in favour of the Queen of *France*, when they were ſurrendred. If this Right be a pre-

Which was done at the Treatie of *Munſter* in the year 1648.

ſent and certain Succeſſion, if it be a Propriety which can never validly be renounced, it is the duty of the States of the United Provinces to think either handſomly to reſtore them, or elſe to defend their poſſeſſion by the Sword: the Sentence is already pronounced, The moſt Chriſtian King, *not out of a covetous deſire to conquer, but according to the preciſe obligation of his Duty and Conſcience*, is reduced to the neceſſity of entertaining them in the ſame faſhion as he doth us; he cannot abandon the Rights of his Wife, without failing in what he owes unto her, and what his own proper reputation requires of him.

As to the other Lands, if it be true, as they affirm it to be, that Sovereignties are *unalienable*; *that Princes cannot renounce their Rights in prejudice of their Succeſſours*, even by publick Treaties; that thoſe are Rights of Bloud, inſeparably tied to all the poſteritie; that they may pretend Relief even againſt Treaties of Peace upon

upon the ſcore of Læſion; in fine, if no conſideration neither of Advantage nor of publick Faith can prevail againſt the rules of litigious wrangling; behold the Treatie of *Munſter*, concluded with the States of the United Provinces, reduced to the ſame inconveniences with the *Pyrenean*.

Some Objections remain to be ſatiſfied in particular, which I have not yet touched but very ſuperficially, though they be ſufficiently repelled by the Principles which I have eſtabliſhed.

They oppoſe to us in the firſt place the Sentence of the Emperour *Henry* in the year 1230. The ſame Counſellour *Stockmans* hath very pertinently anſwered it in the 21. Article of his Treatiſe; to which I will onely adde, that this Sentence can have no relation to the Right of Devolution, for theſe following Reaſons.

1. The firſt is, That the whole Narrative on which he founds the Deciſion of the Emperour is meerly the Invention of this Scribbler, in re-

gard that neither the Sentence nor the Hiſtory do mention any ſuch thing, and that it is repugnant to the Text even of the Sentence, which ſpeaks not of the Propriety, but onely interdicts the Alienation, which in it ſelf was not permitted to him without the Conſent of the States: and what he adds in the Sentence, *Matrem habuerit, & illa ſit mortua*, ſhews that it ought not to be underſtood of the Sovereigntie, but of ſome patrimonial Goods belonging to the Prince which might have been affected with the Portion of the deceaſed Mother. For if this Sentence were founded upon the Right of Devolution, he would have made of it ſome expreſs mention, as well as have alledged another cauſe for it: beſides that, as I have already made appear, the Devolution doth not abſolutely hinder, and does not annull the Alienation, but renders it onely ſubject to be reſcinded after the death of the Father, remaining notwithſtanding valid in caſe the Son comes to die before him.

2. This

2. This Sentence would be unjuſt and contrary to the ſame Cuſtome, if it were founded upon the Devolution, becauſe this Right doth not give the Children that horrible power preſently to ſeiſe upon the Goods of the Father in his life-time, becauſe of a ſimple Alienation, but gives them onely a hope to enjoy them after his death, and the right to pretend Relief, and to re-demand what hath been alienated during his life. Otherwiſe, it were to authorize an unjuſt Violence, which would ſtifle the Law of Nature; it were to make Children Curatours to their Fathers, and to give them an opportunity to drive them from their Throne. From whence it is neceſſarily to be concluded, that the Sentence of the Emperour ought to have ſome other motive, which can be no other then that which I have related. In effect, ſeeing that it is not founded but upon the Death of the Dutcheſs, it muſt needs have had ſome other cauſe then that of Devolution, in regard the Empe-

rour's Argument would not be concluding, The Dutcheſs is dead, then her Husband cannot Alienate; it being certain that he may not onely in ſome caſes, but that the Dutcheſs alſo her ſelf might have renounced this Right by a Diſpoſition amongſt the living, or by one relating to her death.

3. If this Sentence did concern the Goods of the Sovereigntie, it would determine nothing at all, by reaſon that by their own nature they cannot be Alienated without the Conſent of the States, who themſelves would have been the firſt to have oppoſed this Alienation; unleſs their Aſſent had been required, and that they had judged it to be founded on the benefit of the State; in which caſe the Emperour with Juſtice could not have hindered the effect thereof.

4. This Sentence was given in favour of an Heir-male, and does not inferr that the Daughters of the Firſt Bed ought to exclude the Sons of the Second. Indeed it is horrible and repugnant

pugnant to Reaſon, onely to imagine that ſuch a caſe ſhould ever happen, whereby we might ſee a Daughter upon the Throne to the excluſion of her Brother, and the Son of a Sovereign become Subject to his Siſter: this ſhocks Nature, which hath given the preeminence to Men, and the rights to command, by reaſon of the excellency of their Sex. The Authour of the Dialogue ſtrives to get out of this difficulty by reſtricting this general inconvenience to the particular fact which is actually in queſtion: but he runs from the Liſts, and eludes the point in controverſie. He ſpeaks thus: *The Catholick King ſhall command in his Eſtates, and the moſt Chriſtian Queen in hers, without either of them having any Juriſdiction over the other.* Fol. 52.

This Subterfuge is very pleaſant and moſt handſomlie fanſied; at preſent he changes the perſon of an Advocate into that of a Polititian, and makes uſe of the Expedient when he finds not his advantage in litigious wran-

wrangling. It is happy that *Philip* the IVth left unto his Son other Eſtates: But if he had been onely Duke of *Brabant*, or Prince onely of any one of the other Provinces to which *France* doth pretend, and that the Devolution had place as to Sovereignties, the caſe had happened wherein the Prince his Son had become a Subject to his Siſter. And when we ſpeak of the Monſtrouſneſs which this Cuſtome would produce in it ſelf, and the Inconveniences which may generally ariſe from thence, we do look upon the thing purely in it ſelf, and not in the preſent circumſtance, which is out of the caſe of the Queſtion, and holds no manner of ſimilitude with it; becauſe if the Duke of *Brabant* do poſſeſs other Kingdoms, it is a thing meerly accidental in reſpect of the Dutchy and of its Cuſtoms.

In fine, all that is to be gathered from this Sentence is, that the Emperour would not permit the Duke to alienate his Goods to the prejudice of his

his Son. We cannot inferr from thence any thing in favour of the Devolution, since there be a thousand Imperial Sentences of the same nature for Fiefs, in which the right of Devolution never reigned.

The second Objection is drawn out of the alledged and ill-applied Opinion of some Doctors, who do maintain that when any difference about Feodal Customs is in agitation, it is not to be regulated by those of the Lording, but by those of the Serving Fief.

It is certain that all of them do speak in this place of those Differences which arise upon the Serving Fiefs, which being neither so absolute nor so privileged as the Lording, ought not to be measured by the same Rule: and this makes altogether in our favour, to shew the advantagious difference which there is of the greater in regard of the lesser. Meanwhile they turn the Argument to the opposite way, and in stead of acknowledging that this Reason is sufficient to demonstrate the disproportion betwixt the one

one and the other, and that they cannot be made equal, they will yet make uſe of it not onely to equalize the Lording Fief with the condition of the Serving, but even to ſubject it to and regulate it by the ſame Cuſtome; although the contrarie doth evidently appear by the very Texts which they cite, and very falſlie interpret. The Example is moſt clear in the Citation which they do produce of *Molina* in his Treatiſe of * *Majoraſques.*

* The *Majoraſque* in *Spain* is the Eldeſt Son's Title.

They wreſt this paſſage many ways; the Dialogue drags it thus by the hair: *That the Crown of* Spain *being the firſt Majoraſque of the Realm, it ought indiſpenſablie to conform to the Laws which the Cuſtoms of the Country have introduced for Majoraſques.* To diſcover the falſe artifice of this Diſcourſe, there needs no more then to confront it with the Text; and then it will be ſeen that it is far from ſubjecting the Sovereignty to Local Cuſtoms in order to the Majoraſques; he wills, on the contrary, that all others

Treatiſe of the Rights of the Queen of *France*, fol. 170. Dialog. fol. 40.

ſhould

ſhould be regulated according to the practice of the Crown: *Ab eóque* (he ſpeaks of the Kingdome) *cætera primogenia tanquam à capite derivari, ſuccedendique rationem accipere:* from whence he concludes, that every Proceſs which ariſes from the inferiour Majoraſques, *ſit ſecundùm Leges ad Regni Succeſſionem inſtitutas decidenda.*

I cannot wonder enough at the blindneſs of this Authour, who puts into our hands the titles which condemn him, and yet preſumes to turn them into a ſenſe altogether oppoſite. The Sovereign Fief, according to this Text, is the Rule of all the reſt: how can he then pretend that the particular Cuſtoms of other Fiefs ſhould be the Rule of the Sovereign? The Authour of the Treatiſe of the moſt Chriſtian Queen's Rights makes uſe in ſubſtance of the ſame Subterfuge, but with a little more modeſty: he proves by the Authours which he cites, that *the Majoraſques of* Spain *were inſtituted after the example of the* *Fol.* 171.

the Royaltie; but he ſlips in ſomething of his own, *that the Rules introduced for the Succeſſion of the one were alſo introduced for that of the other*; though it be certain by all this Text, and by what follows of *Covarr.* whom he cites, that the Sovereign Fief gives the Law to all inferiour ones, and conſequently cannot receive it from their particular Cuſtoms. But as he doth falſly cite to us the *Spaniſh* Authours, to reduce the Sovereignties to the Cuſtoms of the Countrie; let us ſee whether their own *French* Authours will agree in this Maxime. Behold what *Peter du Puy*, very famous and of great credit among them, ſays upon the Subject of the Succeſſion of the Dutchie of *Bretannie*, which makes altogether for our purpoſe. *If this Difference were among particular perſons and inhabitants of a Kingdome, it ſeems that the Infanta of* Spain *might have ſome apparence of Right by means of the Cuſtome, of which ſhe will make uſe: but it being all publick and all Royal, decided by the publick*

Du Puy in the Treatiſe of the Rights of the King r. c. on the Dutchie of *Bretannie.*

lick Rights of France, *known to all the World, we may juſtly be aſtoniſhed how they have dared to preferr to them Local Cuſtoms, which regulate nothing but Differences among private perſons.* Can any thing be clearer then this? The Counſellour *Stockmans* cites *Molineus*, and other Authours both *French* and *Germans*, on this Subject, who confirm the ſame thing in ſuch expreſs terms, that they leave no matter of doubt. The Reader may ſee them cited in the 21. Chapter, and have recourſe, if he think fit, unto the fountain.

The Authour of the Dialogue is admirable in all, but he ſurpaſſes himſelf in prettineſs, when, outvying *Pythagoras* and *Ovid* in the changes of Forms, he makes the Sovereigntie to appear under divers Metaphyſical Abſtractions, whereof Lawyers till now have been ignorant. At firſt he repreſents it like a Queen, and in a moment after like a mean Citizen: one while he brings it upon the Stage as a married woman, and then again

as

as a Widow: he kills it, and raiſes it to life again; exalts it, and debaſes it; and into what poſture ſoever he puts it, he hath the dexterity to make it ſtill act its part handſomlie. When 'tis needfull to purſue the Cauſe by Arms, then (forſooth) is it a Sovereigntie that holds of none but God, and that may admit of no other Judge: when he will diſpute it in the Quiddities of Law, it is a ſimple Inheritance, ſubject to the Law of the People. When the Renunciation is treated of or the Teſtament, he places it above Kings and Reaſon of State: but when he brings the Devolution into play, he ranks it among Slaves. When it is his pleaſure, the Prince muſt be *the Soul of the Cuſtoms*: and when he finds it more to his advantage, he ſubjects the Prince to it. And after all theſe long windings, he finds at the end of his reckoning that he hath fought onely againſt his own Shadow, and that all this Gallimaufrie tends to reduce the Sovereign Succeſſions to the low condition of private Fiefs.

Sove-

Sovereignties do never die, according to the opinion of all the *French* Doctors, their Rights and Prerogatives ſubſiſt ſtill during the *Interregnum*, changing of Maſters alters nothing in their Juriſdictions and Preeminences. This diſtinction is of no uſe where we handle the Right of Devolution, ſince that it falls even whilſt the Father lives: ſo that if the Devolution hath place in Sovereignties, and if this Right, as they pretend, be a true Succeſſion and Proprietie, the Father in effect is no longer Sovereign, becauſe the Right of the Sovereignty is properly and radically affixed to the Proprietie, and not to the Poſſeſſour of the Rents and Fruits. So that in reference to the Sovereigntie the Prince is to be reckoned of as dead from the firſt moment in which he is a Widower; he cannot be any more *the Soul of the Cuſtoms*, ſince he hath no more in him the principle of politick Life, being deprived of the Proprietie of his Dominion; and his Life

might be called an *Interregnum*, and his Sovereigntie a vacant inheritance. But what would follow upon all this? Would this Sovereigntie without Maſter ceaſe to be a Sovereigntie? and though it could not eſtabliſh new Laws, would it fall from its ancient and natural Prerogatives? ſhall it be reduced either by the natural or the civil Death of the Prince to the meaſure of the Succeſſions of Burgeſſes? would it become inferiour to its ſelf? If that were true, it would follow that it is the Perſon of the Prince onely which makes it Sovereign: whereas, on the contrary, it is the other ſolely which puts him into the Rights of Sovereigntie. In truth all the diſcourſe which he makes on this Subject is ſo confuſed, that it is not poſſible to comprehend what advantage he ſeeks from thence.

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The third Objection is founded upon the Inſtrument of the Treatie of Marriage of the Queen of *France*, in which *Spain* hath covenanted *a formal*

formal and expreſs Derogation to all contrary Cuſtoms: from whence he will infer this Conſequence, That if the Cuſtoms *did not affect thoſe Goods*, *Spain* had never ſought to be *diſingaged of that whereby it was not bound.* How can men who affect to be thought Wits dare to fill Volumes with ſuch Trifles as theſe be, without apprehending the cenſure of honeſt men? The Derogation which was made to the Cuſtoms is reciprocal, as much on *France*'s ſide as on *Spain*'s: and if the Argument which he takes from it had any kind of force, it would conclude againſt *France*, and render it ſubject to the Cuſtoms of *Bretanny* and other Provinces, as well as *Spain* to thoſe of *Brabant.* But who does not ſee that this Derogation does ſtretch it ſelf onely to ſuch Cuſtoms which may tie the Sovereigns, or ſerve as a pretext by right or wrong to form new Pretenſions againſt them? Experience teaches us that we cannot be too circumſpect againſt ſuch turbulent ſpi-

rits, and that it was not enough to take away the Root and the true Cauſes of the evil, but that alſo it was neceſſary to cut off the Shoots and Branches, and not onely remove the Cauſes, but even the Pretexts and Apparences.

Although the other Reaſons which they do alledge to eſtabliſh their pretended Right to the other Provinces, in which the Devolution is unknown, be entirely ruined by this one Principle, which I think to have ſufficiently proved that Sovereign Succeſſions neither ought to be nor can be regulated by Local Cuſtoms; I will not omit to adde one word more by the way touching this matter, till ſuch time as the Lawyers of thoſe places, who are better verſed in the nature of their particular Cuſtoms, ſhall be able to give to the publick a more exact account of them.

He ſtrives to prove by three Titles, that the Seigniourie of *Mechlen* belongs to the Infanta by this ſame Right

Right of Devolution. The firſt is the Cuſtome, which, as he pretends, hath introduced the Devolution into that Land. I have already ſhewn that this doth not concern the Crown. The ſecond is the Union which was made of this Land to the Dutchie of *Brabant* by *Philip* ſurnamed *the Bold*, and confirmed by the Emperour *Charles* the Vth. This Union doth not render it dependent upon *Brabant*, as it is really notorious that it doth not. The third is the eſtabliſhed Practice, that all moveable Fiefs of *Brabant* are to be regulated by the Feodal Cuſtome of that Dutchie. He doth here contradict himſelf, ſeeing that a moment after he hath raiſed this Lordſhip to the degree of a Sovereigntie, he will make it to depend on the Dutchie of *Brabant*; wherein he is groſſely miſtaken, being it is certain that it doth not hold of it in any kind. After he hath declared it to be inſeparable from *Brabant*, he will make it ſubject to the Feodal Cuſtome, by virtue

whereof it might be alienated as well as all the other particular moving Fiefs of the ſame Juriſdiction, which are every day parted and divided among the Succeſſors, as I have already made appear. Let us ſay then, that they are Sovereignties united under the ſame Privileges, but Independent of one another, which may have, and have in effect different Cuſtoms; and that Sovereignties, as I have already proved, not being ſubject to Devolution, that of *Mechlen* cannot have been made liable thereunto by this Union, which takes nothing from it of its proper Sovereignty.

All that he alledgeth touching the Upper *Gelderland*, the County of *Namur*, and the Dutchie of *Limbourg*, ſeeing it is onely grounded upon the Devolution, and their Union with *Brabant*, falls of it ſelf, I having before deſtroyed all the Foundation. But he falls alſo here into another Errour, ſuppoſing, either out of a real or an affected Ignorance, that *Gelderland* and *Limbourg* are united to *Brabant*,

Brabant, which will never be found.

The other Rights upon *Hainault*, *Luxemburg* and *Burgundie*, are almoſt of the ſame nature, and founded on this falſe Principle, That Sovereignties ought to be regulated by the Local Cuſtoms: wherein he falls into a new contradiction. For in the Treatiſe of the Queen's Rights, in the place above cited, he confeſſes that the Prerogatives which the Sovereign Fiefs have above others are, that they are unalienable, and indiviſible; and yet notwithſtanding, by ſubjecting *Luxemburg* and *Burgundie* to the Local Cuſtom, he makes them both liable to diviſion, *Burgundie* into three parts, and *Luxemburg* into two: which renders yet more manifeſt what difference there is betwixt the Lording and the Serving Fiefs, and the Prerogative which the firſt have over the others by his own confeſſion. And it cannot be comprehended which way he pretends to reconcile theſe two oppoſites, that the Sovereign Succeſſion is indiviſible in *Fol.* 166.

its own nature, and yet ſubject at the ſame time to a Cuſtom which would make it diviſible. But finally, both in *Burgundie* and in *Luxemburg* it is permitted unto Fathers to make Teſtaments and Subſtitutions, and the moſt part of the principal Fiefs are provided to the Eldeſt Sons by the diſpoſitions of private perſons: If then they will reduce the Prince to the condition of a private perſon, and the Sovereigntie to the practice of Local Cuſtoms, they ſhould at leaſt doe him the favour to make him equal in every thing with his own Subjects, and ſhould not rob him, as they do, of the power which the meaneſt Citizens enjoy, to diſpoſe of their Goods by Will as they think beſt themſelves, without being obliged to leave any more unto their Daughters then barely their Legal Portion. But the very Reaſon which they do alledge to overthrow the deceaſed King of *Spain*'s Teſtament, doth plainly ſhew the preeminence of Sovereign Fiefs, and that they

they are ſo unalienable, that the Princes themſelves have not the right to diſpoſe of them at their pleaſure, to the prejudice of the Supreme Law of the State, which being above the Prince himſelf, would be too much humbled if it were made inferiour to the Cuſtom of Subjects.

It will be found throughout all the Annals, and by the courſe of Succeſſions in all theſe Sovereignties which they pretend to, that they were never diſmembred nor divided, though there have been frequently many Brothers and Siſters, who, according to the particular Cuſtom, might have had right to pretend to the Diviſion of them, if theſe Sovereign Fiefs were of the ſame nature with the others.

Philip and *John*, Dukes and Earls of *Burgundie*, *Mary*, *Charles* his Grandchild, *Philip* the Second, Third, and Fourth, left many Children; and yet this Countie was never ſubject to Diviſion, which the Authour of this Libell labours to extend from private

private Fiefs to Sovereignties. And if we will look yet higher into the matter, it will be found that this Rule hath always remained inviolable in the Succeſſion of its Princes.

Whereupon ſeveral Obſervations may be made. The firſt, That this order of Succeſſion hath been common in all the Provinces to which *France* doth pretend, and that this ſhews that of their own nature they have always been indiviſible. 2. That the Males have ever ſucceeded, to the excluſion of Daughters. 3. That all the Local Cuſtoms which theſe Authours do alledge have never taken place in all theſe Sovereignties. 4. That the Right of Devolution never had effect in reference to Princes on any occaſion; otherwiſe *Catharine* Dutcheſſe of *Savoy* had ſucceeded *Iſabella* her Siſter, and ſo much the rather becauſe ſhe had not at all renounced.

It ſeems that he ſeeks onely to divert himſelf in all the diſcourſe he makes

makes touching the Countie of *Hainault*, and that by the Examples and Allegations which he produces he will ſet forth his Memory to the prejudice of his Judgment. It is not here the place to diſpute whether *Hainault* be a Fief or a Free-hold, ſince in the one as well as the other Title the Right of the Queen is equally ill founded. The Sentence which he cites in favour of *Jaqueline* Counteſs of *Hainault* againſt the Biſhop of *Liege* is wholly from the purpoſe, ſeeing it is out of controverſie that the Daughters do ſucceed in this Countie, failing of Heirs-male of the ſame Line. The Point in queſtion was to prove that the Daughters of the Firſt Bed did exclude the Males of the Second in the Succeſſion of this Countie: yet of this he is altogether ſilent, and all the remainder of his diſcourſe is but a ſtraying and a vain *Caracole* out of his courſe; and after he hath run himſelf out of wind, without being able to make any Concluſion upon thoſe Grounds which have

The Treatiſe of the Queen's Rights, *page* 365.

have coſt him ſo much pains to eſtabliſh them, he retires like a *Cacus* into his den of the particular Cuſtoms, which is his onely refuge.

But it is here where he hath loſt all manner of Modeſty, when he dares affirm that the Cuſtom of the place prefers the Daughters of the Firſt Bed before the Males of the Second. If he had conſulted the Practitioners of the Countrey, they would have informed him of the Uſe inviolably obſerved among them, and founded upon their Cuſtom, which gives the preference to the Males without any diſtinction of Bed in the Succeſſion of Fiefs; they would have let him ſee, in the 13th Chapter Article 6. of their Cuſtoms, that the Daughters of the Firſt Bed ſhould remain without any part in the Fiefs of their Fathers, and that the Males of the Second ſhould abſolutely carry them by the diſpoſition of the Cuſtom, according to their ordinary Rule; if the ſame Cuſtom had not permitted the Fathers and Mothers

to

to provide a remedie in this by a ſpecial Diſpoſition. Theſe are the very words of the Cuſtome: *Two Conjuncts having onely one Daughter may make and paſs advice to her profit out of their Fiefs and Allodes and main Farms, either wholly or in part of them, even by charging one piece or more of the Rents hereditarie, or* Viageres, *revocable or irrevocable, as if they had many Children; to the end that if from the ſaid Conjuncts, or from other ſubſequent Marriages, Sons ſhould come, the ſaid Daughter may have a Portion.* It is clearer then the day that the End of this Cuſtome is, to give the Fathers a remedy againſt the practice and the general Cuſtome which prefers the Males of the Second Bed, to hinder that the Daughters may not be left without any part at all, as it would happen if the Parents did make no diſpoſition to the contrary. It is alſo ſeen by the ſame Text, that regularly the Parents had not the power to make even this Diſpoſition, and that they did

did receive it onely by this Cuſtome, *may make and paſs advice*: Therefore they could not doe it if this Cuſtome did not give them the power, otherwiſe it would be ſuperfluous and without effect.

The 7th Article of the ſame Cuſtome doth ſo neatly interpret the preceding, that if the Writer had but taken the pains to reade it, he would not have ſo inconſiderately hazarded upon a Propoſition which tends to deſtroy all his credit, the terms whereof are theſe: *And though by the Law, if there be no advice, the Fiefs patrimonial of the Survivor belong to the Son of the Second Marriage, when there is onely a Daughter of the Firſt Bed; nevertheleſs the ſaid Fiefs being ordained by advice to the Daughter,* (as in the preceding Article) *or to many of the former Marriage, ſuch an Ordinance ſhall take place, to the excluſion of the Son of the Second Marriage*: which is in the publick an univerſal practice, and without contradiction throughout all this Province. As

As to the Country of *Namur*, though particular Goods there be ſubject to the Devolution, it is as true that the Sovereigntie is exempt from it; that it is ſeen at this hour by the Contract of Sale which the Earl *John* made to the behoof of the Duke of *Burgundie* in the year 1421. that he parted with the ſaid Countrey to this Duke upon Conditions which are inconſiſtent with the Devolution, having ſold it to him for himſelf and his Heirs which ſhould be Earls of *Flanders*, without ever being able to be ſeparated from that Countie. This Inſeparabilitie doth neceſſarily exclude the Devolution, and the rather, becauſe the Countie of *Flanders* to which it is united doth no ways acknowledge this Cuſtome.

As for what concerns *Artois*, the Cuſtome which he cites is not received; and the diſpoſition of the 27th Article which he alledges extends no farther then to the Goods that are ſituated within the Sheriffdom of *Arras*, as is clear by the preceding Articles,

ticles, and in the Text of the ſame Cuſtome, which cannot onely not be a Law to the Sovereigntie, but cannot ſo much as be a Rule to the other Lands of the Countrey, which hath its general and received Cuſtoms, failing whereof it hath recourſe to the written Law. And though this Cuſtome of *Arras* gives ſome right to the Children upon the Goods of the Survivor, it is notwithſtanding far different from the Devolution in all its effects, as thoſe may obſerve who ſhall have the curioſity to reade it. And it is ſo limited to the place, that though it affects the Movables, yet thoſe cannot be ſeiſed on which are out of the Sheriffdom. But by the general and the received Cuſtome of this Province, there is neither Devolution nor Interveſtiture, (as they call it:) on the contrary, by the 139. Article the Survivor inherits one half of all the Movables of the firſt deceaſed, and by the 134. the Husband hath the Adminiſtration of all the Goods

of

of his Wife, and can alienate the Unmoveables without her conſent; which is altogether oppoſite to the Interveſtiture. The 176. Article, which is urged againſt us, concerns not the Children of the Firſt Bed, ſo much the more, becauſe that in the 94. the Eldeſt carries away all the Fiefs without diſtinction of the firſt or ſecond Marriage, and ſucceeds for his ſhare with the Children both of the one and the other Bed.

The Texts which he alledges againſt this drawn from the 4th Article, Chapter 105, and from the 3d Article, Chapter 91, and others, are applied by this Authour directly againſt the true ſenſe, and the ordinary practice of the Cuſtome: For if we conſider *Hainault* as a Fief, it is out of doubt that the Males of the Second Bed do exclude the Daughters of the Firſt; of which the practice is ſo regularly obſerved in all the Tribunals of that Province, that it is to goe directly againſt a known Truth to bring this Queſtion ſo much as in Controverſie.

verſie. From whence it follows, that the Cuſtoms which he cites cannot be underſtood in reference to Fiefs, but where there is a concurrence of Male againſt Male, or of Daughter againſt Daughter, of two Beds; in which caſe the Male of the firſt Marriage carries it before thoſe of the Second Bed, and the ſame doth the Daughter of the Firſt Marriage before thoſe of the Latter: But when the Queſtion is betwixt Male and Female, the thing is out of all debate in favour of the Male. But if, on the contrary, they will make *Hainault* paſs for a Free-hold, it is indubitable that the Father may diſpoſe of it by Advice and by Teſtament, and alſo by Subſtitution; as is certain by the 6. Article of the ſame, Chapter 105. The 9. Article of the 94. Chapter which he cites ſpeaks onely of thoſe Fiefs that come by Collateral Succeſſion, and cannot be made a Precedent in relation to Free-holds, which the Parents may diſpoſe of: and that which he adds, that according to the ſame Cuſtome

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the direct Donations do paſs for Purchaces, is abſolutely falſe, when the Donation is made under the Title of a Portion: and it is a monſtrous thing, that they ſhould offer to make paſs for a Purchace the Reverſion of thoſe Provinces in the perſon of *Philip* the IVth, ſince it was expreſsly provided in the ſaid Donation, and that King *Philip* the Second and the Prince his Son had never conſented to it but under this Clauſe of Reverſion: ſo that in the recovery of theſe Fiefs they are returned into their firſt nature, of being the Legal Patrimonie of the Line of *Philip* the II^d^; and they did alwaies remain ſuch, notwithſtanding the Donation, and chiefly in what relates to *Hainault*. For if it be conſidered as a Free-hold having been given with a Clauſe of Reverting, it ſtaies alwaies in its qualitie of Patrimonies; and if it be a Patrimonial Fief, it is in the ſame qualitie likewiſe that it returns back again to the Giver. We might alſo ſay that as being a Fief it could not be legally given away,

ſince it is certain that the Fathers in the County of *Hainault* may not diſpoſe of them by Advice, but by way of Diſinheriting: ſo that on which ſide ſoever it be taken, it is impoſſible *France* ſhould finde their advantage. But 'tis to dwell too long upon theſe Cuſtomary practices, and to injure Princes, to weigh their Rights in ſo weak and ſo unequal a Balance.

I cannot here omit, in paſſing, to deſire the Reader to obſerve one notable Artifice by which *France* would give a falſe weight to her bad Cauſe by begg'd Authorities, and ſubtilie ſtolen by a wittie Surprize. The Authour of the Queen of *France*'s Rights makes his great Batterie thereof, and thinks to confound the Readers with theſe ſpecious words, of Univerſities which *France* hath conſulted, of Doctours from all parts who have ſubſcribed to their Opinions; and, if we will believe him, our Condemnation is decreed by the unanimous conſent of all the moſt renowned Lawyers. But becauſe he is in poſ-

poſſeſſion of never reporting matters of fact in their true circumſtances, his bad memory ought to be a little helped, and he made remember, that they have indeed attempted ſome Univerſities and particular Doctours to maintain theſe Opinions; of which ſome have fallen into the Trap, and now deteſt their inconſiderate Lightneſs; others have had a ſharper ſight, and would give no Deciſion upon ſo indeterminate a fact and ill explicated: The Queſtion hath been propoſed to them under borrowed names, without reducing it to the terms of the true Fact whereof at preſent we are treating; they never mentioned to them that Sovereignties were the thing in queſtion, whereof ſome are Fiefs of the Empire, and others independent; they concealed the Act and the Clauſes of the Renunciation, as well as its Cauſes and the End thereof; they never knew that it was covenanted by a Treatie of Peace between two Kings, & agreed to by a Contract of Marriage inſeparable from that of

the Peace; they were never told of the causes which *France* had given to the delay of the Payment of the Portion; they took a great deal of care not to make it appear that the Goods which they pretended to were inseparably united among themselves by a Fundamental Law of the State; and without furnishing them with any of those instructions which might have been usefull to them in the framing of a solid judgment, they satisfie themselves with the meer questioning them upon the right of Devolution, and with the inquiring of them whether a Father could alienate his Goods to the prejudice of a Right devolved to his Children, If a Daughter might renounce a Succession which was fallen to her, If a Minor might be relieved against an enormous Læsion, If a Renunciation made purely in contemplation of the Portion ought to hold, when the Portion hath not been assigned upon the Goods of the Father, and that the very payment had not its effect; and so

ſo of the reſt. They have anſwered to theſe Propoſitions according to the diſpoſition of Common Law and the practice of the Local Cuſtoms. But from whence comes it that the *French* Writers, who have ſtuffed their works with ſo many unuſefull Allegations, durſt never produce any of theſe Conſultations, which, no doubt, (had they touched the Caſe) would have been of more force then all that they have alledged in their works? The cauſe of this ſilence is eaſily to be divined: It is by reaſon that they could not ſpread them abroad without diſcovering at the ſame time the vain illuſion of their captious proceeding, and overturning all the ſtrength of theſe ſame Authorities, by detecting that they were all ſurreptitiouſly extorted.

But to put the buſineſs home to them, we ſhall willingly conſent that the fact be reduced to its true Species, and that it be referred to the Judgment of the moſt famous Univerſities in *Europe*, excepting onely

thoſe who by preoccupation of mind, or by the common ſubjection of their Countrey, are not in a condition to think that which they ought, nor to utter ingenuouſly that which they think.

Let us conclude this Article then with a Dilemma, which proves demonſtratively that the Queen of *France* hath no manner of Right, which way ſoever this buſineſs be looked upon. For either the Devolution hath place as to the Sovereignties, or not. If it be received in them, then the * Succeſſours of *Catharine* are the lawfull Lords of all the Lands which are ſubject to this Cuſtom; this is unqueſtionable. But if the Devolution be of no force in relation to Lording Fiefs, all the Pretenſions which *France* doth build on this Title are annihilated. So that all this great heap of Titles and inventions, which he hath with ſo much ſolicitude gathered together to uphold the Right of the Queen of *France*, cannot operate (though it were approved

* The Houſe of *Savoy.*

proved of) but in favour of a third partie; and thus thinking to plead the Cauſe of the Queen, he hath acted onely for the Duke of *Savoy*.

ARTICLE VI.

A Diſcourſe touching the Intereſt of Chriſtian Princes in this War, and the preciſe Obligation of the Eſtates of the Empire for the Warrantie of the Circle of Burgundy, *&c.*

THere are two Motives of different nature which ought to incite the Princes of Chriſtendom to undertake the defence of our Cauſe; the one is the Intereſt of State, the other is a ſtrict Obligation of Juſtice. The firſt regards generally all the Potentates of *Europe*; the ſecond is particular onely to the Princes and States of the Empire: the one depends upon their foreſight and their wiſe Conduct; the other is joyned to the

the duty of the laſt, to the Fundamental Laws of their State, to the Treaties of Peace and Warrantie, and to the reciprocal bond which unites all the Members of this vaſt Body, which makes all its Greatneſs and Glory, and which is the onely foundation of its Quiet and Safety. We will begin with the firſt, as being more univerſall, and more conſidered at this day in the World; and that will guide us inſenſibly to the ſecond; to let both the one and the other ſee, that our Buſineſs is theirs, that our Commotion is their Trouble, and our Fall their own Ruine. It is our buſineſs here to uphold the Law of Nations which is common to all, and to hinder that Maximes may not be introduced into the World which would deſtroy the whole Commerce of mankind, and render humane Societies as dangerous as the company of Lions and Tigers. Here it is our deſign to defend the publick Faith of Treaties againſt the Subtilties of litigious Pleading; to preſerve the Law

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of Arms within the Rules and Formalities which the univerſal Conſent of all Nations hath eſtabliſhed; and to remove out of the ſight of Chriſtendom a ſcandalous Example, which by its lamentable conſequences would expoſe the weakeſt to the diſcretion of the more powerfull, and would make Force the ſole Arbiter of all Proceſſes. We treat of the way to ſtop the courſe of a rapid Torrent, againſt the Impetuoſity whereof Peace, Marriage, Oaths, Bloud, Kindred, Friendſhip, and Condeſcenſions are not Banks ſtrong enough to keep it within its Chanel. It is our purpoſe to defend the common Bulwark againſt a vaſt Deſign, which hath for its cauſe nothing but the predominant deſire of Conqueſts, for its end Dominion, for its means Arms and Intricacies, nor for its limits any thing but what Chance will preſcribe. In fine, we are here to decide the fortune of *Europe*, and to pronounce the Sentence either of its Freedom or Slaverie.

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Here I reſolve to ſhake off all manner of intereſſed thoughts which I may have for my party; I will conſider my ſelf in this Article no more then as a ſimple Citizen of the World: and to ſhelter my ſelf the better from all ſuſpicions of Partialitie, I will found my Diſcourſe on no other Principles but thoſe which I ſhall draw out of *French* Authours.

Since the Providence of God was pleaſed to raiſe the moſt Auguſt Houſe of *Auſtria* to this high pitch of Greatneſs which hath dazled the eyes of Envy, we have ſeen growing in the heart of *France* the lamentable ſeeds of this unjuſt Emulation, which for ſo many years together hath produced all the Misfortunes & Troubles of Chriſtendom. The principal Game of the *French* hath been, to diffuſe this Jealouſie everywhere, and to render its Jaundice contagious, repreſenting unto all the other Princes the Power of this Auguſt Houſe as a fearfull Phantaſm which would ſwallow them up, and giving themſelves out for the onely

onely *Perſeus's* able to deliver fettered *Europe* from the fury of this Chimerical Monſter, whereof they had made to them a vain Bugbear. But experience hath made it known, that they onely did render our Power ſuſpected, to raiſe their own; that they did fright others with us, onely to make themſelves neceſſary; and did not offer them their protection, but to become their Maſters, and make them the Inſtruments of their Ends. Many have blindly fallen into this ſnare, and, to avoid an imaginary Danger, have thrown themſelves into a real Precipice. This Artifice was ſo ſucceſsfull, that a part of *Europe* put it ſelf in Arms againſt the Valour and Good fortune of *Charles* the Vth, and the profound Wiſedom of his Succeſſour: and all this Commotion was founded upon one onely Principle of State which the *French* Writers have eſtabliſhed with an extraordinary diligence, and upon which the Duke of *Rohan* had made roul all his Treatiſe of the Intereſt of Princes; *That there are*

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two Powers in Chriſtendom which be like the two Poles, from whence all the Influences of Peace and War do deſcend upon the other States.

From whence he draws this Maxime to regulate the Conduct of all other Princes, That their principal Intereſt is to hold the Balance ſo equally betwixt theſe two Great Monarchies, that neither of them, either by the way of Arms or Negotiation, may ever come to prevail notablie; and that in this Equality doth ſolely conſiſt the Repoſe and Safety of all the reſt. Though he doth applie this Maxime very ill to the particular uſe of *France*, and artificially ſerves his turn with it as of a falſe Lure, inſenſibly to draw all the other Potentates into the *French* nets; it is notwithſtanding very wholſome in it ſelf, and if it had been managed with all the vigour and prudence which was neceſſary to render it uſefull, *Europe* at this day ſhould enjoy a perfect Tranquillitie. But many have been miſtaken by a falſe ſuppoſition, that the Power and

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the Deſigns of *Spain* were more to be apprehended then thoſe of *France*; and that by this very Reaſon of State they were obliged to put the Counterpoiſe into the *French* Scale of the Balance.

'Tis eaſie to believe that at preſent none will be found not fully undeceived of this errour in matter of Fact, which hitherto made them abandon their true Reaſon of State. But to examine this Queſtion in its fountain, and in every circumſtance belonging thereunto, it will be to the purpoſe to compare the moſt flouriſhing State of the Houſe of *Auſtria* under the glorious Reigns of *Charles* the Vth and *Philip* the II^d^, and the Maximes of theſe two Princes, with the preſent ſtate and manner of acting of *France*; and then it will be clearly diſcerned by this parallel, that all which was apprehended from us at that time by a Panick fear, now is to be feared and prevented in regard of the *French*, by the ſolid principles of a true Prudence.

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To diſcourſe well of this, we muſt conſider the Situation both of the one and the other Monarchie, the Genius of the Princes which govern them, and the Inclinations of their People, the Maximes of their Government, and the circumſtances of their Conduct both paſſed and preſent. This would require a large Diſcourſe; I ſhall content my ſelf onely to touch, in paſſing by, the Eſſentials, and leave the Conſequences to the conſideration of the Readers.

The Monarchie of *Spain* is a large Machine which cannot eaſily be ſhaken, but which cannot likewiſe move with the Agilitie which is neceſſarie to forein Enterpriſes. The Situation of this Monarchie is advantagious for its ownDefence,being compaſſed with the Sea and the *Pyrenean* Mountains: but it is inconvenient for invading other States, becauſe of the defect of a nearer conjunction betwixt the Members thereof, which cannot hold any Communication with one another but by the large Chanels of the Ocean and

and the Mediterranean Sea, which do expoſe their Deſigns to all the injuries of Weather, and to the inconſtancie of an Element on which no juſt meaſures can ever be taken. The Union of the Empire to the power of *Spain* in the perſon of *Charles* the Vth was rather a ſtep to the deſign of becoming greater, then any addition to his power: he eſpouſed with the Empire all the Quarrels of Religion and of State which the conjuncture of thoſe times had ſtirred up in that great Body, which did take up, in favour of others, the moſt part of his care and forces. In a word, this powerful Monarchie ſeems to have been raiſed by God to be the Bulwark of the reſt, againſt the *Turk* in *Hungarie* and in *Italie*, againſt the *Moors* in *Spain*, and againſt *France* both in the *Low-Countreys* and in *Italie*: But the neighbourhood of theſe three Powers by which it is invironed is a ſtrong barr to ſtop its Deſigns, if it ſhould endeavour to form too vaſt ones.

The Genius of its Princes is ſuitable to its Situation; They are naturally Courteous, and inclined to Vertue; and if they have exceeded in any thing, it never was but in Goodneſs. *Charles* the Vth loved noble Glory; but he had ſo little Ambition, that he reſigned the Empire to his Brother, and all his Kingdoms to his Son, and uſed his Victories with ſo great Moderation, that he reaped no other benefit thereby, then the Honour to have overcome, and the ſatisfaction to have preſerved his Realms.

Philip the Second, according to the confeſſion of the Duke of *Rohan* himſelf, had no inclination at all to Arms, nor ever took them up but for his Defence, or out of neceſſitie to humble thoſe who fomented Rebellions within his Kingdomes.

It is to joyn two inconſiſtent things, to repreſent him in one and the ſame time as an enemie to War, and yet ardent to obtain Conqueſts. His Succeſſours have been endowed with

with so rare Clemency, that their activeness had never appeared to the eyes of the World, if the necessity of their defence had not excited and in a manner constrained them to shew themselves. The people of *Spain*, and of the other Kingdoms which live under the same Dominion, are naturally friends to Quietness, enemies to Noveltie, satisfied with their present Condition, and have not the least propension or itching to trouble their Neighbours. But if we consider the Maximes which these great Princes have followed, we shall find that the principal to which they have most adhered are directly opposite to those of Conquerours.

The first is, To keep inviolably the Faith of publick Treaties, which are powerful bridles to the Ambition of a Prince who desires to extend his Limits, and do put great obstacles to his Designs, by making him a *Slave to his Word.* It cannot be found in all the Lives of these Monarchs, since the Emperour *Charles* the Vth

till our time, that ever they have broken or prevaricated in any Treatie, nor began a War for the inlarging of their Limits.

The ſecond, To prefer Religion always before Reaſon of State; which is directly contrary to the Rule of Conquerours, who do dexterouſly make uſe of all ſorts of Sects to compaſs their own Ends.

The third, Not to make uſe of their Victories, and the Advantages of their Arms, nor of thoſe of their Allies: for we find that in all the Actions of thoſe * two great Monarchs, they never applied any one of their Conqueſts to their own particular benefit, except what did belong unto them by juſt Succeſſions.

* *Charles* the Vth, *Philip* the II^d^.

The fourth, To rule according to the Laws, and leave their People in the peaceable poſſeſſion of their Privileges; which amongſt Conquerours would paſs for an eſſential fault, againſt the firſt Principles of their Politicks, which require before all other things, that they make them-

themſelves abſolute and independent at home, and that they break all the Chains of Domeſtick Laws which might hinder their actings abroad.

The fifth, Never to admit neither League, nor Alliance, nor Commerce, nor Peace with the common Enemie of Chriſtendom. This is a bad undertaking of the Deſign of rendring themſelves Maſters of *Europe*, when they draw upon themſelves the emulation and the hatred of the Tyrant of *Aſia*. Let us adde to all theſe things the mature Circumſpection which they obſerve in their Counſels, which renders their Reſolutions more ſlow, and leſs active, then is requiſite to a Conquerour, who ought to give more to Fortune then to Prudence. This made a famous *French* Authour ſay, *If it were true that* Spain *aſpired to the Univerſal Monarchie, he would adviſe them to deſire God to grant a reſpite of the end of the World.* *Malherbe* in his Epiſtles.

France is a Kingdome that hath all its Parts united, abounding with

Men, induſtrious in Commerce, which gains with their Baubles and their Modes the money of all other Nations, which hath conſiderable Harbours upon the Ocean and the Mediterranean Sea, and in their neighbourhood no conſiderable powers to fear but that of the Houſe of *Auſtria*.

The Genius of the Nation is naturally inclined to Arms, full of heat, unquiet, lovers of Novelty, deſirous of Conqueſts, quick, active, and inclinable to all manner of Expedients which they conceive to be advantageous to their particular Ends.

The Maximes of their Government (according to what may be gathered from their Conduct both paſſed and preſent, by their own Writers, and by the ſame Treatiſe of the Duke of *Rohan*) are the following.

Firſt, To entertain always War abroad, and exerciſe their young Nobility at the expence of their Neighbours.

This is a moſt politick Maxime, and

and moſt ſuiting with their own utilitie, but moſt troubleſom to all the reſt of the World. In effect, it is certain that the Genius of the Nation is ſuch, that it cannot endure to ſubſiſt long in the Idleneſs of Peace; there muſt be Aliment for this Fire, and if ſome were not given it from abroad, it would form to it ſelf matter at home. To this natural Propenſion muſt yet be added the Cuſtome of moſt part of their Provinces, and the particular Diſpoſitions of Noble Families, which give ſo great advantages to the Elder Brothers, that they leave almoſt nothing to the younger but their Induſtry and Sword: and as they do not cultivate Letters, and their Quality ſuffers them not to apply themſelves to Mechanick Trades; there is nothing left to them but the Warrs or Robberies, to preſerve themſelves from Miſerie. Whence it comes that this Kingdom always finds it ſelf filled with an idle and boyling Youth, ready to undertake all, and which

ſeeks employment for their valour, at whoſe coſt ſoever it be. The libertie which they had heretofore of voiding this Bilious humour, and of running to ſuppoſititious glory by ſingle Combats, is at preſent taken from them by juſt Decrees: the little ſhifts of Induſtry by which formerly they ſheltred themſelves from want are now ſeverely prohibited: But at the ſame time that all ways are ſhut unto them, whereby to open their ſpleen in their own Countrey, the Polititians of *France* held it neceſſary to furniſh them with another gate by which they might evaporate this Flame, which would gnaw their own Bowels if it did not find another vent.

Moreover, as the greateſt Revenues of the Crown of *France* conſiſt in the Purſe of the People, and that the exceſſive Contributions cannot be exacted in times of Peace, without making a great many Malecontents; it is neceſſary to feed them with the ſmoke of ſome Conqueſts,

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and always to have pretexts to remain in Arms, and maintain by force the Royal Authority, which hath ſo ſtrangely overflowed the limits of their Fundamental Laws.

As it is impoſſible for them to ſatisfie all the Princes and great men of their Realm, and that ever ſince the Reign of *Henry* the III[d] they have taken it for a Rule of their Conduct, to bring them low ſo far as they can; it is extremely convenient to hold them imployed in forrein Wars, and to incite them to glory, that they may be conſumed in ruinous undertakings.

Their ſecond Maxime is, To enter into all ſorts of Affairs either by right or wrong, and everywhere to make themſelves the Arbiters either by violence or by cunning, by Authoritie or by ſurprize, by threatnings or by friendſhip, and to get in as Mediators even into thoſe Treaties of Peace wherein they are intereſſed as Parties; as they pretended to doe in that of the Biſhop of *Munſter*, and do actually

actually practiſe in the Aſſembly at *Breda*. In all the Differences, either paſt or preſent, they have never doubted to take Partie; there never yet was Quarrell in which they had not dexteritie enough to form unto themſelves ſome kind of Intereſt, and ſome Rights; nor did ever any People ſhew the leaſt inclination towards Rebellion, but inſtantly they made them their Allies. But experience hath made it viſible, that they never entred into any War but to exaſperate it, nor into any Peace but to ſow the ſeeds of new Diſputes. It would be ſuperfluous to number them, ſince there is no body ſo little verſed in the ancient Story who does not confeſs this truth, and that the modern Examples have made us know it ſufficiently. In the laſt Troubles of *Germanie*, into which they thruſt themſelves at firſt under the colour of Protection, with a thouſand ſpecious proteſtations that they would never pretend any thing for themſelves, but barely the ſatisfaction

faction of their Allies; when the buſineſs came to its full Criſis, they diſmembred *Alſatia* from the Body of the Empire, by the ſame Artifice with which they had diſſolved from it * three Biſhopricks under the Reign of *Henry* the Third.

* *Metz, Toul,* and *Verdun.*

The third Maxime is, To have for their onely Rule the Intereſt of State, ſo that the Faith of Treaties, the good of Religion, or the ties of Bloud and Amitie cannot hold them. 'Tis this that the Duke of *Rohan* puts for the fundamental Principle of all his Work; *The Princes command over the People, Intereſt commands over Princes.* All that the *Turks* have done in Chriſtendom ſince *Francis* the Firſt to our time, they owe it to the Alliances of the Crown of *France* with the *Ottoman* Port, and to the Diverſions which they have made in their favour againſt all thoſe who have deſired to undertake ſomething againſt this Common Enemy. And though that the Proteſtant Religion is beholding to it for a part of its

its progreſs; yet *France* doth not therefore deſiſt from giving ſecret intelligences to the Catholicks, to make them conſider its power, as the onely, which being tied by no Capitulation, is therefore in a condition to reduce all Sects under the Obedience of the Church. In a word, for the erection of their Monarchie, they do imitate and apply to ill uſes the Maxime which St. *Paul* practiſed for the enlarging of the Kingdom of *Chriſt*, *Factus ſum omnibus omnia*: and as this Apoſtle complied with all ſorts of ſpirits to gain them to the Church, weeping with the afflicted, and taking part in the conſolation of thoſe which he found to be ſatisfied; theſe, by a wrong Imitation of this holy Conduct, conform themſelves to the Intereſts of all the World, to make them ſerve theirs, and ſacrifice Religion as often as it comes in competition with the Intereſt of State. The examples are ſo freſh, that we need not make any enumeration of them: and many things might be

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ſaid on this ſubject, in reference to the laſt War againſt the *Turks*, if Modeſty did not oblige us to ſuppreſs them.

Their fourth Maxime is, To keep as much as they can forrein States occupied and divided at home, or elſe engaged in ſome external War. *England*, the Empire, *Italie*, *Denmark* and *Spain* have had a ſad Experience of this; and now both *Poland* and the States of the United Provinces do reſent the deplorable effects thereof.

All theſe Maximes are proper to Conquerours, and as many infallible marks of a vaſt and profound Deſign long ago contrived. The Predeceſſors of the moſt Chriſtian King could not bring it to perfection, becauſe the Civil Wars, the power of *Spain*, and the juſt Limits which the Royal Authoritie then acknowledged, were powerful Barrs to ſtop them: but at preſent, having impoſed at home an abſolute Law over all their Subjects, and having put Diſſention

ſention amongſt all Strangers, there remains nothing but that they overcome the third Impediment, by compleating the overthrow of the Monarchie of *Spain*, that they may paſs upon our Ruines to the Conqueſt of all the other States. To attain this, it was neceſſary they ſhould lull us aſleep with the Aſſurances of Peace, and Propoſitions of Leagues and Union: The War of *Portugal* was carefully to be nouriſhed, to conſume by a ſlow fire this Monarchie, and keep at the ſame time *Portugal* in their Dependencie, by the neceſſity of their Aſſiſtance: A War muſt be raiſed between *England* and *Holland*, and prolonged by a thouſand Artifices, to get themſelves elbow-room to Invade the *Low-Countries*, whilſt theſe two great Powers ſhould be drowned in Bloud to their reciprocal Ruine. It was held requiſite to ſow the Seeds of Diviſion in the Empire by the means of particular Leagues, which, under colour of the Good of the Peace of *Germany*, have no other End then to facilitate the

the Invaſion of it, and hinder Aſſiſtance to be given to one of its moſt precious Members. A powerfull Faction likewiſe was to be raiſed in *Poland*, to keep all the Princes of the North under check, and a part of the Emperour's Forces unuſefully imployed in the Gard of his Frontiers. To ſeem indifferent to both Religions, it was neceſſary one while to aſſiſt the Elector of *Mentz* againſt thoſe of *Erfort*, and then the Elector *Palatine* againſt *Mentz*; and to ſeek everywhere their Advantages in the Troubles of others.

I cannot here omit one freſh Example which makes much to my purpoſe, though I foreſee that it will occaſion as much horrour in the Reader as it hath done to my own Pen. *France*, by virtue of a Treatie of Warrantie with the States of the United Provinces, after divers unuſefull Requiſitions made by the ſaid States, found her ſelf at laſt obliged, by her Intereſt, to make ſome ſhew of an inclination to imbrace their Defence againſt *England*. This Treatie of reciprocal

ciprocal Warrantie expreſly contains, that the Allies ſhould not ſo much as treat, and much leſs conclude any Peace with the Common Enemie, or Truce, without the conſent of the other, *and without procuring the ſame Satisfaction for their Allie which he ſhould obtain for himſelf.* The States of the United Provinces did ſo ſcrupulouſly adhere to this Obligation, that notwithſtanding the little Reality of the *French* Succours againſt *England*, and the conſiderable Advantages which they could have found by Treating apart, they would never lend an ear unto any Propoſition of this nature. *France*, on the contrary, alwaies held a Negotiation open by the means of the Earl of *S. Albans:* and upon the juſt Suſpicions which they gave unto the ſaid States, by the frequent goings and comings, and the flux and reflux of Courriers, continually paſſing betwixt *Paris* and *London*, the Court of *France* did ſo authentickly confirm to them their Faith, and gave them ſo poſitive words, that they would never

ver hearken to any Propoſition but in the common Aſſembly for the General Peace between all the Allies, that even they ordained the Count *de l'Eſtrade*, that in caſe credit were not given to what he aſſured in the quality of Embaſſadour, (ſo good an opinion have they of the honeſty of their Miniſterie) he might deveſt himſelf of his Character, to aſſure them of it in his own name. A great honour indeed for Monſieur *de l'Eſtrade*, which ſhews that he is not capable of deceiving but in the quality of a Miniſter of *France*, and that the Probity of his Perſon exalts the Dignity of his Charge. Notwithſtanding, if he had been ſo unadviſed as to have engaged himſelf in this Surety, he would at this day have found himſelf liable both to the Principal and the Intereſt; it being out of doubt that *England* hath had the dexterity to engage *France* in this Quagmire, to conclude a ſecret Treatie of Peace with them without the Conſent, nay without the Knowledge, of their Al-

lies, without making any mention of them or of their Intereſts, and without any reſervation of or relation to the General Peace. But that which is yet more aſtoniſhing is, that after this Peace was concluded, notwithſtanding the Promiſe made to the *Engliſh* not to uſe any Hoſtility againſt them, *France* uſed all its endeavours with the States of the United Provinces to put out their Fleet ſpeedily to Sea, binding themſelves to joyn their own Fleet with it, and agreeing with them upon all the Conditions neceſſary for this effect. If this proceeding doth not open the eyes of all *Europe*, they'l have no cauſe to complain of the Calamities which they are to ſuffer by *France*, which takes ſo much pains to undeceive them.

All the Maximes which I have above related are thoſe of Conquerours; but their manner of executing them is ſo much the more to be feared, as it conſiſts altogether in Quickneſs and Activity, and that no Reaſon of Juſtice, nor any Condeſcenſion

ſion to the Interpoſition of Neighbours, and of their own Allies, is able to ſtop the current of it. It is no more now the fear nor the jealouſie of the Power of the Houſe of *Auſtria*, which ſerved them for a Pretext in their former Wars, that makes them act at this day; they dare no longer make uſe of that ridiculous Scarecrow of the Univerſal Monarchie aimed at by the *Spaniards*; they have no occaſion from the Diſcontents of the Proteſtants of *Germanie*, and their Alliances with the United Provinces; they can no longer cloak with the Intereſt of others the Itch which they have to conquer: there remained nothing elſe for them to doe, but to goe ſeek the occaſions of War in the very Sanctuary of Peace, and to form the project of it upon a Marriage, which they themſelves do avow was made for no other End but to render the Union eternal and inſeparable.

It may be judged by all this diſcourſe, that theſe great Deſigns muſt needs have a vaſter Idea then the

Conqueſt of the *Low-Countries*; that they are the firſt attaqued as the Outworks, to the end they may lodge themſelves without impediment in the Body of the place they have Pretenſions to, *the greateſt part of Germanie*, as an ancient Domain of *France*, which could not be alienated. They are going to form to themſelves a Precedent againſt the States of *Holland*, by the Annulling of all the Royal Surrenders, and the Eſtabliſhment of the Devolution. They covet Harbours in *Spain*, Leagues in the Empire, Factions in *Poland*, Wars in *England* and *Holland*, Paſſes into *Italie*, and the Sovereign Arbitrage everywhere. Their Quiet conſiſts in the Trouble of all others, their Glory in Conqueſts, and their Advantage in the publick Calamities. In this they follow their ſole and ſupreme Rule of Intereſt. It is the part of all others to take their meaſures from this, and to think ſeriouſly of proſecuting their own.

There remains ſomething to be ſaid of

of the particular Obligation of the Empire for the Defence of the Circle of *Burgundie.* I ſhall paſs but lightly over this matter, becauſe it is already decided by a ſolemn Act of the Chancerie of the Empire; and that he who hath written on this Point at *Ratisbon* hath penetrated in few words ſo throughly into the Bottom of this Affair, and ſo drained it, that he hath left nothing to be added, no more then to be replied thereto. In effect, I never read any thing more cold nor weak then the Anſwer which was long ſince publiſhed on the behalf of *France* againſt this ſolid Writing: It is filled with an unuſefull heap of words, ſhuns the Liſts everywhere, ſtrays from the Queſtion, omits the principal Objections, and ſuppoſes the Point ſtill in controverſie to be a thing already proved. It inlarges it ſelf into great complaints, becauſe by this Writing it appears as if people would doubt that the moſt Chriſtian King had a deſign to Invade the Circle of *Burgundie.*

They could not more palpablie manifeſt the Injuſtice of this War, then by taking for an Injurie the bare Suſpicion which we conceived thereof. But what will he ſay at preſent, when all *Europe* ſees that our Fears were a prudent Foreſight, and that the Event hath verified our Conjectures? Can he to day make that paſs for an act of Juſtice, which he deteſted before as an Attempt which we could not ſo much as foreſee without offending them?. Will he not bluſh for ſhame at the Exclamation which he hath made, *Aut quaſi Chriſtianiſſima Regia Majeſtas in animo haberet eundem Circulum denuo Armis aggredi, & invadere?* It was then a Crime but to think that this could happen; and now it is a greater, it ſeems, with them, to wonder that it is come to paſs.

But in the end, no man doubts but that the Circle of *Burgundie* is a Member of the Empire: the Authour of this Anſwer grants it to be ſo himſelf, and thus diſpenſes with my pains to prove it. He

He knoweth alſo that as ſuch it is obliged to aſſiſt the Body in caſe of neceſſitie, and all the Members of the Empire, and to furniſh its proportion of the Contributions which are neceſſary to the Defence thereof; which the King hath exactly and ſuperabundantly accompliſhed on all ſorts of occaſions, both before and after the Treatie of *Munſter*. And by the rule of Law, he that is obliged to all the Charges, ought likewiſe to participate of all the Advantages: otherwiſe the Union of this Circle with the Empire would be a Leonine Societie. All the World knows that this Warrantie is reciprocall, and that it muſt equally hold on both ſides; ſo that he who is bound to ſuccour the Empire againſt all, and on all manner of occaſions, ought alſo to receive the mutual Aſſiſtance of the Empire againſt all thoſe who do invade him.

It is likewiſe certain, that by the Treatie of *Munſter* it is included in that Peace as a Circle of the Empire,

and that by this inclusion it ought to enjoy all the Rights and Prerogatives which appertain to the other Circles, and all the effects of the Peace, by which the common and reciprocal Defence is established.

Against which they have nothing to oppose but an Article ill understood, and worse interpreted, of the Treatie of *Munster*, *de mutuis Hostibus non juvandis*, by which the Empire and *France* do reciprocally oblige themselves not to give any Assistance to their respective Enemies.

France hath directly contravened this Article by the Assistance which she sent against the Bishop of *Munster*, which effectually did enter into the Lands of the Empire; and by the Counsel she gave to reduce this Bishoprick into Ashes.

But for the better understanding of this Article, we must observe that it is concluded betwixt the Bodie of the Empire indivisibly on the one part, & *France* on the other, which do reciprocally promise not to assist the Enemies

nemies of each other. Here the Empire with all its Members is reckoned but one Partie contracting, and *France* the other: so that when it is said that it shall not assist the Enemies of *France*, it should be understood of Enemies abroad, and cannot concern the Members of the Empire, which in one Body are the same Parties which have treated with her, and to which all the Body owes defence, by an original, natural, and undispensable obligation. Were this otherwise understood, it might be inferred by the same Argument, that in case the Empire did assault any Province belonging to the Crown of *France*, the other Provinces of the same Realm could not go to their Assistance without violating the Article *de non juvandis Hostibus*. If *France* doth replie, that those Provinces make up but one Kingdom, we shall also say, that the Ten Circles do constitute but one Empire; so that when *France* hath War with any one Circle of the Empire, it is a War made against

gainſt the whole Body: And the word *mutui hoſtes* cannot be interpreted but of Strangers; elſe the Body of the Empire had obliged it ſelf not to aſſiſt its Members againſt *France*, and by conſequence to abandon it ſelf, and to ſee it ſelf diſmembred by parcells, while the Parts of this great Body ſhould not dare to ſtretch forth their hands to the help of one another. But in this caſe it is not to give Aſſiſtance to the Enemies of *France*, but it is to defend the Empire againſt *France*, which doth invade it. If this Clauſe, *de mutuis Hoſtibus non juvandis*, be univerſal, and do comprehend all thoſe with whom *France* hath any debate, it would operate againſt all the other Circles, as well as that of *Burgundie*, and there ſhall be no Member of the Empire which may hope for any Relief from the other Circles in oppoſition to the Invaſions of *France*. But if they will apply it particularly to the Circle of *Burgundie*, they muſt prove, by the ſame Inſtrument of

Peace,

Peace, that although it be a Member of the Empire, it is of the number of thoſe Enemies which it cannot aſſiſt againſt *France*; and that the other Circles are excepted out of this general Rule, or that they have ſome particular Privilege above that of *Burgundie*. But neither the Treatie of Peace nor the Imperial Conſtitutions making it to be in a worſe condition then the others, and on the contrary including it in the ſame Peace and the ſame Rights which the other Circles do enjoy; it follows, that the Clauſe *de non juvandis Hoſtibus* ought to be extended to the Ten Circles, or that it ought not to comprehend that of *Burgundie*. The Imperial Capitulation, which is formed upon the Idea of the ſame Treatie of Peace, doth yet more clearly explicate all the Doubts which may be raiſed touching a truth ſo palpable, by the reſervation of the Article of Warrantie contained in the Inſtrument of Peace: which ſhews clearly that the Obligation not

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to assist the Enemies of *France* cannot derogate from that which all the Circles of the Empire have reciprocally to assist each other. All that the Writer of *France* alledges against this in his Answer is but a frothed Cream, and is so strongly refuted in the Replie which of late hath come to light, that it were lost labour to endeavour to give it any farther clearing.

The Electors, Princes and States of the Empire, are fully perswaded of these Truths; they are not unsensible of the Contempt done to their Jurisdiction openly violated by this Attempt; they are not blind to the Dangers which threaten them by our Oppression: but as they never go from the ways of Moderation, they would not imitate *France*, by beginning, after their Example, the Proces by the Execution, judging that it behoved them to try the means of Gentleness, Reason, and Remonstrances, first, before they should recurre to the last remedie. But they

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are too ſharp-ſighted to ſuffer themſelves to be dazled any longer with void and undetermined Anſwers, by which *France*, under the general expreſſion of a ſeeming deſire of Peace, obſtructs all the paſſages by which they might enter to an exact diſcuſſing of the Buſineſs. In effect, to the Suſpenſion of Arms which they have propoſed, they have had no Return but that of a diſdainful Refuſal; to the Mediation which they offered, a doubtful Hope; and to the Time and Place of the Treatie, a Silence full of Artifice. They will ſee full Commiſſions before they declare themſelves as to other circumſtances, which (according to the order of all Treaties) neceſſarily ought to precede the ſending of Plenipotentiaries: They take great care to perſuade that our Queen hath cut off all kind of approches to an Accommodation: They do of purpoſe conceal from their Deputies her laſt Anſwer, by which ſhe offers to ſend her Embaſſadors to the place which

ſhall

ſhall be agreed on, and to refer all to the Arbitration of the Mediators which ſhould be choſen. They will have nothing of all this: a full Power muſt needs precede, without knowing whither the Plenipotentiaries ſhall be ſent, or to whom they will refer themſelves. So ſoon as this ſhall be conſigned, they'l form Scruples upon every ſyllable; if there wants onely a *Comma*, *Spain* ſhall be preſently judged as an enemie to the Peace. In the mean time they go on always gaining ground, they render from day to day the Calamitie more incurable; and whilſt they labour by this Juggling to ſtop the juſt Aſſiſtance of the Empire and of the other Princes, the progreſs of their Arms advances without check, and they labour to put themſelves in a condition to render all thoſe Helps unprofitable which juſtly we may expect, and to deal ſo, that our Friends ſhall not be undeceived, till their Succours can no longer hinder our Ruine.

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The onely Remedie is, quickly to imbrace Maximes proper for countermining theirs. They have a Kingdome united in all the Parts of it; let us unite our Affections and Powers. Their Quietneſs depends upon our Trouble; let us ſeek our Safetie by the abating of their Pride. They act by way of Fact; let us repell Force by Force. They dallie with us by vain hopes of Peace; let us put our ſelves in a condition to make them deſire it ſeriouſly. In a word, they have a deſign upon us all: let us make then of this Cauſe a Common Intereſt, and not anchor all our Deliverie upon the favour of the *Cyclop*; which was indeed profitable to *Ulyſſes*, but by a good fortune which in reaſon he ought not to have expected.

FINIS.